

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
P/S

Docket No. 75-1317

**IN THE
United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

— vs. —

LLOYD DIXON, JR.,

Appellant.

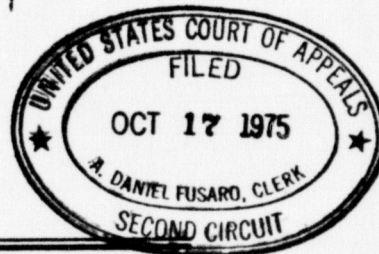
On appeal from the United States District Court
for the Western District of New York

APPENDIX

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Roll, Schuller & James,
of Counsel.



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DOCKET ENTRIES.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

John T. Curtin

D. C. Form No. 10 Rev.

CR-1373-21

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U.S.:

vs.

Robert Stewart, Esq.

LLOYD DIXON, JR. (Cts. 1 thru 6); AVM CORPORATION
(Ct. 6)Department of Justice
Atty., Strike Force,
Genesee Building, 1 W.
Genesee Street, Buffalo,
New York 14202
(716) 842-3285

Conspiracy by use of the mails to solicit proxies in respect to securities of the AVM Corp., in contravention of a regulation by the Securities & Exchange Commission & to devise a scheme & artifice to defraud the stockholders of the Corp., by making false & fraudulent entries into the books & records of the Corporation & using the services of the Postal Service in furtherance of the scheme to defraud (Ct. 1), in vio. of Sect. 371, Title 18, U.S.C.; Solicit proxies in respect to the securities of the AVM Corporation, in contravention of a rule by the S.E.C., by the use of the mails, (Ct. 2), in vio. of Sects. 78n, 78ff, Title 15, Sect. 2, Title 18, U.S.C.; Using the U.S. Postal Service in the furtherance of a scheme and artifice to defraud, (Cts. 3,4,5), in vio. of Sect. 1341, Title 18, U.S.C.; Filed with the SEC, financial statements in an annual report which omitted to include a "Schedule II," (Ct. 6), in vio. of Sects. 78m, 78ff, Title 15, U.S.C.

For Defendant:

- (1) Herald Fahringer
(2) David Floyd, Esq., and
Harry Hugu, Esq. (Local
Counsel)
(2) Mitchell Rogovin, Esq.
1229 Nineteenth St., N.W.
Washington, D.C. 20036

DATE	NAME OR RECEIPT NO.	REC.	DISE
7/24/74	#14676	5000.00	
7/26/74	14676	5000.00	5000.00
7/26/74	14676	5000.00	5000.00
7/26/74	14676	5000.00	5000.00

Title 18, 15
Sec. 371, 78n, 78ff, 2
78m

ON APPEAL - Lloyd Dixon,

Herald Fahringer, Esq.
1 Niagara Square
Buffalo, N.Y. 14202
(716) 849-1333

J. S. Manning Sep 5 1975

PROCEEDINGS

1973

- Jan. 10 Filed Indictment
Jan. 10 J.S. 2 made
Jan. 10 Deft. Lloyd Dixon being duly arraigned enters a plea of not guilty; Atty. David Floyd enters a plea of not guilty in behalf of the AVM Corporation. Released on own Recog. The Court noted dates for motions will be set later.
Jan. 16 Filed Court Steno's minutes of 1/10/1973
Jan. 30 Status Report. Court allows Defts. 3/2/1973 for filing motions. Govt. must answer by 3/16/1973. Adj. 3/16/1973 for status report
Mar. 9 Filed Defts.' notice of motion for discovery and insp., delivery of all evidence under Brady vs. Maryland, Bill of particulars; a hearing, etc., disclosure of the use of a confidential informant, etc., inspection of the G.J. minutes, and order dismissing the indictment, etc., ret. 3/20/1973.
Mar. 15 Filed Govt's answer to defts' combined motions
Mar. 16 Status Report. No appearances for defts. Adj. 3/23/1973.
Mar. 23 Status Report. Atty. Fahringer informs Court all motions have been filed on behalf of his client. Adj. 9:45 - 4/6/1973
Mar. 30 Motion for discovery and Inspection. Adj. 4/6/1973

DOCKET ENTRIES.

DATE	PROCEEDINGS
1973	
Apr. 6	Motion for discovery and Inspection. Submitted. Govt. to file certain grand jury testimony with the Court.
May 4	Filed Order that the Deft. AVM Corporation is entitled to the Grand Jury minutes of its Officers and employees. However, it is ordered that only the Attorneys for the AVM Corp. shall have access to this testimony. Deft. Dixon's application for Grand Jury minutes is denied. Motion of the Deft. LLOYD Dixon, Jr. to dismiss the Indictment is denied. The U.S. Atty. is directed to file as a court exhibit the Grand Jury testimony taken before the panel which returned the indictment in this case--CURTIN, J.
May 11	Filed Govt's notice of motion and motion to set a date for trial for criminal trial calendar
May 17	Motion to set trial date. Adj. 5/24/1973
May 24	Motion to fix a date for trial. Adj. to end of June, at which time the Court will set another date for the determination of a trial date.
Dec. 6	Filed Notice of application - AVM Corporation, pur. to Rule 11 of the FRCP, for leave to withdraw its plea of not guilty and to enter a plea of nolo contendere to the indictment, ret. 12/13/1973-10:00 a.m.
Dec. 13	Application by Deft. AVM Corporation for a plea of nolo contendere. Argument held. Decision reserved.
1974	
Jan. 31	Set date for trial. No appearance for deft. Lloyd Dixon, Jr. Court sets March 18, 1974, as trial date for U.S. v. Lloyd Dixon, Jr.
Feb. 7	Deft. AVM offers plea of nolo contendere to Count Six (6) of the Indictment. The Court accepts plea. Sentence is deferred to---3/14/1974
Mar. 18	For sentence - Avm Corp., Court will set new sentencing date.
Mar. 26	Filed Subpoena (D.T.) - Robert M. Entwistle, Atty., served 3/11/1974--
Mar. 22	Filed Order setting case for trial on the Calendar of Hon. Lloyd F. MacMahon--CURTIN, J. (Re: U.S. v. Lloyd Dixon, Jr.)
Mar. 26	The Court having accepted--plea of nolo contendere by Deft. AVM Corp., set sentencing for 4/8/1974----
Apr. 9	Filed Deft. Lloyd Dixon, Jr.'s motion for continuance-ret. before Magistrate, on 4/15/1974
Apr. 8	For sentence. Deft. AVM Corporation is sentenced as follows: On Count Six (6) - Deft. is fined \$5,000.00; Deft. has Three Months to pay fine--CURTIN, J.
Apr. 8	J.S. 3 made for Deft. AVM Corporation
Apr. 12	Filed two subpoenas (D.T.) - Custodian of the Records - Marine Midland Chautauqua National Bank, and the Custodian of the Records First National Bank, Jamestown, N.Y., served 4/11/1974
Apr. 16	Filed Judgment re Deft. AVM Corporation
Apr. 23	Filed two subpoenas (D.T.)-Custodian of Records, Mellon Natl. Bank & Trust Co. served 4/15/74 and Custodian of Records, Deposit Natl. Bank served 4/18/74
Apr. 29	Filed subpoena (D.T.) - J.R. Wiggins, Mgr. Ernst & Ernst-served 4/25/1974
Apr. 30	Filed subpoena - Kenneth R. Hammond, served 4/26/74
May 2	Filed subpoena (D.T.) - Sam Hale, served 4/29/1974
Sept. 23	The Court set 12/3/74 as Date Certain for Trial.
Nov. 15	Filed subpoena--Robert Entwistle served on 11/11/74
Nov. 19	Filed four subpoenas--John T. Lyons, Kenneth Hammond, William Porterfield, and William Lewis, served on 11/14/74

DOCKET ENTRIES.

Lloyd Dixon, et al

Sheet No. 2

CRIMINAL DOCKET

Cr-1973-31 T-10861

DATE 1974	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Nov. 26	Filed subpoena (D.T.) - Mr. Paul B. Sullivan, served 11/20/74		
Dec. 3	Filed subpoena - Richard B. Colburn, 11/25/74		
Dec. 3	Govt. moves case ready for trial, before Judge Curtin, at Buffalo, N.Y., whereupon the Jury is duly empanelled; Trial is adj. until tomorrow, 12/4/74 at 10:00 A.M.		
Dec. 4	Trial continues same appearances and Jury ----		
Dec. 6	Filed Ct. Steno's transcript of testimony of witness William Lewis taken in the proceedings of trial before Judge and Jury commencing on December 4, 1974.		
Dec. 6	Filed Ct. Steno's transcript of testimony of witness Robert M. Entwisle taken in proceedings of trial on December 5, 1974.		
Dec. 5	Trial continues from yesterday with the same appearances and jury---- deft moves to dismiss the indictment.		
Dec. 6	Filed Ct. Steno's transcript of excerpt of proceedings of trial before Judge And Jury on 12/5/74		
Dec. 6	Trial continues with same appearances and jury - Trial adj. to 12/10/74; jury leaves - Court reserved decision on motion by defendant to dismiss.		
Dec. 10	Trial continues from December 6 with the same appearances & jury - Jury retires to deliberate upon their verdict. The Judge discharges the jury for the evening with instructions to return tomorrow morning at 10:00 to further deliberate upon their verdict.		
Dec. 11	Trial continues with same ppearances and jury - Jurors resume deliberation -- Jury returns a verdict of guilty on all Six (6) counts; Sentence is set for 1/27/1975 - bail is continued.		
Dec. 18	Filed Defendant's motion for a new trial etc., ret. 1/7/75		
1975			
Jan 6	Filed Ct. Steno's transcript of proceedings of trial held before Judge Curtin and Jury resuming at 2:00 PM on 12/5/74.		
Jan 24	Filed Govt's response to deft's motion		
Jan.27	Motion by Deft./Dixon Jr., for a new trial. Adj. 2/3/75 at 2:00 P.M. for deft. to respond to Govt's reply.		
Feb 3	Deft's response to Govt's reply. Adj. to 2/18/75 at 2:00 p.m.		
Feb 18	Oral argument on deft's motions. Submitted. Interviews of witnesses-Curtin,DJ		
Feb. 24	Filed Order directing Govt. to furnish typewritten transcript of handwritten notes of		
Feb. 27	Filed letter dated 2/25/75 - from Atty Fahringer to the Court, requesting copies of what was requested by the Court by copy of its order dated 2/24/75, concerning the personnel of Ernst & Ernst.		
Feb 28	Filed deft's affidavit and request that the Court conduct a hearing, and that it grant such other and further relief as is just under all circumstances.		
Mar. 10	Filed Court Stenographer's transcript of proceedings of trial - commencing 12/3/74 (Selection of Jury); and of 12/4/75 (Opening statements) 1 Volume		
Mar. 10	Filed Court Stenographer's transcript of proceedings xxxxxx on 2/18/75		

4
DOCKET ENTRIES.

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Mar 17	Return date for deft's brief. Adj. to 3/24 (Lloyd Dixon, Jr.)		
Mar. 28	Filed Defendant's memorandum of Law in support of defendant's motion in arrest of Judgment		
Apr. 3	Filed Government's answer to defendant's brief		
May 14	Filed letter from Herald Price Fahringer, counsel for Deft. Dixon, to the Court dated 5/8/1975 - re----the decision of the 2nd Cir. in U.S. vs. Peltz which discusses the issue pending before the Court with respect to both proof at trial and punishment.		
May 14	Filed copy of letter from Robert Stewart, Esq., Atty. In Charge, Buffalo Strike Force, Organized Crime and Racketeering Section, to the Court dated 5/12/1975 in response to Mr. Fahringer's letter of May 8, 1975		
May 15	Filed Decision and Order that the motion of deft. Dixon for a new trial is denied. The motion of Deft. Dixon for arrest of judgment is also denied. Indictment does charge an offense in each count and that the Court has jurisdiction of this matter. All pending motions of defendant are denied. Sentence is set for June 2, 1975 at 2:00P CURTIN, J.		
June 6	For sentence - Lloyd Dixon; Adj. 7/14 at 2:00 P.M.; Deft. has until 6/23 to file brief. Govt. to reply by 7/7/75.		
July 14	Return date for deft's brief. Submitted.		
Aug. 11	Defendant Lloyd Dixon is sentenced as follows: On Count One of the Indictment, defendant is remanded to the custody of the Atty. General for a period of One (1) Year and is fined \$10,000.00. On Count Two of the Indictment, defendant is remanded to the custody of the Atty. General for a period of One (1) Year and is fined \$10,000.00. On Count Three of the Indictment, deft. is remanded to the custody of the Atty. General for a period of One (1) Year and is fined \$1,000.00; On Count four of the Indictment, defendant is remanded to the custody of the Atty. General for a period of One Year and is fined \$1,000; On Count Five of the Indictment, deft. is remanded to the custody of the Atty. General, for a period of One Year and is fined \$1,000; On Count Six of the indictment, deft. is remanded to the custody of the Atty. General for a period of one year and is fined \$10,000. As to custody the sentences are to run concurrently. As to the fines, the sentences are to run consecutively. Total fine is \$33,000.00. CURTIN, D.J.		
Aug. 11	J.S. 3 made		
Aug. 11	Filed Deft. Lloyd Dixon's notice of appeal		
Aug. 15	Filed Ct. Stenographer's transcript of proceedings of Sentence held before Judge Curtin, In Part I, U.S. Courthouse, Buffalo, N.Y., on 8/11/1975		
August 19,	Filed Judgment and Commitment Order; Commitment papers issued to the Marshal		
Aug. 29	Original papers, exhibits, docket entries and Clerk's certificate mailed to Clerk, CCA		

CLOSED

5
INDICTMENT.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-VS-

LLOYD DIXON, JR.
AVM CORPORATION

MAY 1972 SPECIAL SESSION
Term

No. CR.

Vio. 18 U.S.C. 371, 2, 1341
15 U.S.C. 78n, 78n,
78ff
17 C.F.R. 240.14a-3,
240.14a-101
240.13a-1

FILED:

COUNT I

The Grand Jury Charges:

That from on or about the 1st of December 1970 and continuously thereafter up to and including the 1st of May 1971, in the Western District of New York and elsewhere, LLOYD DIXON, JR., the defendant herein, and KENNETH HAMMOND and WILLIAM LEWIS, named herein as co-conspirators but not indicted as defendants, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree together and with each other and with other persons unknown to the Grand Jury, to commit offenses against the United States of America, to wit:

To use the mails and means and instrumentalities of interstate commerce to solicit and cause to be solicited proxies in respect to securities of the AVM Corporation of Jamestown, New York (which were not exempted securities) registered pursuant to Title 15, United States Code, Section 781 in contravention of a regulation duly promulgated by the Securities and Exchange Commission, to wit Rule 14a-3 (Title 17, Code of Federal Regulations, Sections 240.14a-3), in that the said solicitation was made by means of a proxy statement which omitted and failed to disclose for the fiscal year 1970, 1 January 1970 through 31 December 1970, the largest aggregate amount of indebtedness outstanding at any time during said fiscal year of an officer

INDICTMENT.

of the AVM Corporation, LLOYD DIXON, JR., President, in violation of Title 15, United States Code, Section 78n and 78ff; Title 17, Code of Federal Regulations, Sections 240.14a-3 and 240.14a-101 (Item 7e) and Title 18, United States Code, Section 2.

To knowingly, wilfully and unlawfully devise a scheme and artifice to defraud the stockholders of the AVM Corporation - said scheme and artifice consisting of making and causing to be made certain false and fraudulent entries into and upon the books and records of the AVM Corporation, said false and fraudulent entries having been made in violation of Title 15, United States Code, Section 78n, and in contravention of the rules and regulations duly prescribed by the Securities and Exchange Commission, to wit Rules 14a-3 and 14a-101 (Title 17, Code of Federal Regulations, Sections 240.14a-3 and 240.14a-101 (Item 7e) in order that the information required by law be denied the AVM Corporation stockholders, thus depriving them of information to which they were then and there entitled, said information being material and necessary to their intelligent, reasonable and rightful assessment of the qualifications of officers then in office on whose behalf the proxies were being solicited - and in furtherance of said scheme and artifice to defraud as aforesaid, LLOYD DIXON, JR., President of the AVM Corporation, aided and abetted by the unindicted co-conspirators, KENNETH HAMMOND and WILLIAM LEWIS, did wilfully and knowingly take and receive and did cause to be taken and received from an authorized depository for mail matter, or from the Postal Service of the United States in Jamestown, New York, said solicited proxies in violation of Title 18, United States Code, Sections 1341 and 2.

In pursuance and furtherance of said conspiracy and to effect the objects thereof, the defendant did commit, among others, in the Western District of New York, the following:

INDICTMENT.

OVERT ACTS

1. On or about 22 December 1970 defendant, LLOYD DIXON, JR., and KENNETH HAMMOND and WILLIAM LEWIS met together.

2. On or about 28 December 1970 defendant, LLOYD DIXON, JR., applied his personal check, in the amount of \$30,000.00, against his AVM advance account then in the amount of \$63,770.00.

3. On or about 29 December 1970, upon the instructions of the AVM Corporation President, defendant, LLOYD DIXON, JR., WILLIAM LEWIS, AVM Corporation Secretary-Treasurer, drew a check on the AVM Corporation payable to himself in the amount of \$5,000.00.

4. On or about 29 December 1970, WILLIAM LEWIS applied the proceeds of the aforesaid \$5,000.00 check against the AVM advance account of defendant, LLOYD DIXON, JR.

5. On 31 December 1970, upon the instructions of defendant, LLOYD DIXON, JR., WILLIAM LEWIS transferred upon the AVM Corporation's books and records, \$9,000.00 from the advance account of defendant, LLOYD DIXON, JR., to the account of LLOYD DIXON, SR.

6. On or about 2 February 1971, defendant, LLOYD DIXON, JR., applied for a \$30,000.00 advance.

7. On or about 20 March 1971, defendant, LLOYD DIXON, JR., received and caused to be received, through the United States Postal Service, a proxy solicited by the AVM Corporation Management.

8. On or about 22 March 1971, defendant, LLOYD DIXON, JR., received and caused to be received, through the United States Postal Service, a proxy solicited by the AVM Corporation Management.

9. On or about 1 April 1971, defendant, LLOYD DIXON, JR., received and caused to be received, through the United States Postal Service, a proxy solicited by the AVM Corporation Management.

All in violation of Title 18, United States Code, Sections 371 and 2.

INDICTMENT.COUNT II

The Grand Jury Further Charges:

That from on or about 1 December 1970 up to and including 1 May 1971, in the Western District of New York and elsewhere, the defendant, LLOYD DIXON, JR., did knowingly, wilfully and unlawfully, by the use of the mails and means and instrumentalities of interstate commerce, solicit and cause to be solicited proxies in respect to the securities of the AVM Corporation (which were not exempted securities) registered pursuant to Title 15, United States Code, Section 781 in contravention of a rule duly promulgated by the Securities and Exchange Commission, to wit Rule 14a-3 (Title 17, Code of Federal Regulations, Section 240.14a-3), in that the said solicitation was made by means of a proxy statement which omitted and failed to disclose with regard to the said LLOYD DIXON, JR., an officer of the AVM Corporation, for the fiscal year of 1970, 1 January 1970 through 31 December 1970 (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transactions in which it incurred, (iii) the amount of such indebtedness outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon.

All in violation of Title 15, United States Code, Sections 78n and 78ff; Title 17, Code of Federal Regulations, Sections 240.14a-3 and 240.14a-101 (Item 7(c)) and Title 18, United States Code, Section 2.

COUNT III

The Grand Jury Further Charges:

That on or about 20 March 1971, in the Western District of New York, LLOYD DIXON, JR., President, AVM Corporation, Jamestown, New York, having devised a scheme and artifice to defraud - said scheme

INDICTMENT.

and artifice consisting of using the mails and means and instrumentalities of interstate commerce to deny the Securities and Exchange Commission information to which the Commission was then lawfully entitled and to solicit and cause to be solicited proxies in respect to securities of the AVM Corporation of Jamestown, New York (which were not exempted securities) registered pursuant to Title 15, United States Code, Section 78l in contravention of a regulation duly promulgated by the Securities and Exchange Commission, to wit Rule 14a-3 (Title 17, Code of Federal Regulations, Section 240.14a-3), in that the said solicitation was made by means of a proxy statement which omitted and failed to disclose for the fiscal year 1970, 1 January 1970 through 31 December 1970, the largest aggregate amount of indebtedness outstanding at any time during said fiscal year of an officer of the AVM Corporation, LLOYD DIXON, JR., President, in violation of Title 15, United States Code, Sections 78m, 78n and 78ff; Title 17, Code of Federal Regulations, Sections 240.13a-1, 240.14a-3 and 240.14a-101 (Item 7e) and Title 18, United States Code, Section 2 - did knowingly, wilfully and unlawfully, for the purpose of executing said scheme and artifice, take and receive from the United States Postal Service the falsely solicited proxies delivered by the United States Postal Service.

All in violation of Title 18, United States Code, Section 1341.

COUNT IVThe Grand Jury Further Charges

That on or about 22 March 1971, in the Western District of New York, LLOYD DIXON, JR., President, AVM Corporation, Jamestown, New York, having devised a scheme and artifice to defraud - said scheme and artifice consisting of using the mails and means and instrumentalities of interstate commerce to deny the Securities and Exchange Commission information to which the Commission was lawfully

INDICTMENT.

entitled and to solicit and cause to be solicited proxies in respect to securities of the AVM Corporation of Jamestown, New York (which were not exempted securities) registered pursuant to Title 15, United States Code, Section 78j in contravention of a regulation duly promulgated by the Securities and Exchange Commission, to wit Rule 14a-3 (Title 17, Code of Federal Regulations, Section 240.14a-3), in that the said solicitation was made by means of a proxy statement which omitted and failed to disclose for the fiscal year 1970, 1 January 1970 through 31 December 1970, the largest aggregate amount of indebtedness outstanding at any time during said fiscal year of an officer of the AVM Corporation, LLOYD DIXON, JR., President, in violation of Title 15, United States Code, Sections 78m, 78n and 78ff; Title 17, Code of Federal Regulations, Sections 240.13a-1, 240.14a-3 and 240.14a-101 (Item 7c) and Title 18, United States Code, Section 2 - did knowingly, wilfully and unlawfully, for the purpose of executing said scheme and artifice, take and receive from the United States Postal Service the falsely solicited proxies delivered by the United States Postal Service.

All in violation of Title 18, United States Code, Section 1341.

COUNT VThe Grand Jury Further Charges

That on or about 1 April 1971, in the Western District of New York, LLOYD DIXON, JR., President, AVM Corporation, Jamestown, New York, having devised a scheme and artifice to defraud - said scheme and artifice consisting of using the mails and means and instrumentalities of interstate commerce to deny the Securities and Exchange Commission information to which the Commission was lawfully entitled and to solicit and cause to be solicited proxies in respect to securities of the AVM Corporation of Jamestown, New York (which were not exempted securities) registered pursuant to Title 15, United States Code.

INDICTMENT.

Section 781 in contravention of a regulation duly promulgated by the Securities and Exchange Commission, to wit Rule 14a-3 (Title 17, Code of Federal Regulations, Section 240.14a-3), in that the said solicitation was made by means of a proxy statement which omitted and failed to disclose for the fiscal year 1970, 1 January 1970 through 31 December 1970, the largest aggregate amount of indebtedness outstanding at any time during said fiscal year of an officer of the AVM Corporation, LLOYD DIXON, JR., President, in violation of Title 15, United States Code, Sections 78m, 78n and 78ff; Title 17, Code of Federal Regulations, Sections 240.13a-1, 240.14a-3 and 240.14a-101 (Item 7e) and Title 18, United States Code, Section 2 - did knowingly, wilfully and unlawfully, for the purpose of executing said scheme and artifice, take and receive from the United States Postal Service the falsely solicited proxies delivered by the United States Postal Service.

All in violation of Title 18, United States Code, Section 1341.

COUNT VI

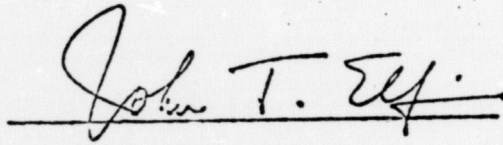
The Grand Jury Further Charges:

That on or about 31 March 1971, in the Western District of New York and elsewhere, the defendants, LLOYD DIXON, JR. and the AVM CORPORATION, unlawfully, wilfully and knowingly violated and caused to be violated rules and regulations under Chapter 2B of Title 15, United States Code, to wit, Rules 5-04 and 12-03 of Regulation S-X, Title 17, Code of Federal Regulations, Sections 210.5-04 and 210.12-03, in that the defendants, LLOYD DIXON, JR. and the AVM CORPORATION, filed with the Securities and Exchange Commission financial statements in an annual report on Form 10-K

INDICTMENT.


which omitted to include a "Schedule II."

All in violation of Title 15, United States Code,
Sections 78m and 78ff, Title 17, Code of Federal Regulations,
Section 240-13a-1



JOHN T. ELFVIN
United States Attorney
Western District of New York

A TRUE BILL:



FOREMAN

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

NOTICE OF APPEAL
CR. 1973-31

LLOYD A. DIXON, JR.

Defendant

NOTICE is hereby given that the above-named defendant, LLOYD A. DIXON, JR., hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction entered in the United States District Court for the Western District of New York (Curtin J.) on the 11th day of August, 1975, and from each and every part thereof and from and each and every intermediate order therein.

Dated: August 11, 1975
Buffalo, New York

Yours, etc.

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Attorneys for Defendant

By _____

NOTICE OF APPEAL.

TO: RICHARD J. ARCARA, ESQ.
United States Attorney
Buffalo, New York 14202

ROBERT C. STEWART, ESO.
Department of Justice Attorney
Of Counsel

PROCEEDINGS, dated 12-4-75.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

5 -v-

CRIMINAL DOCKET
NO. 1973-31

6 LLOYD DIXON, JR.,

7 Defendant.

8 * * * * *

9 Testimony of the witness WILLIAM LEWIS had and taken in
10 proceedings of trial before the Hon. JOHN T. CURTIN, United
11 States District Judge, and a Jury, in Part II, United States
12 Court House, Buffalo, New York, commencing on December 4, 1974.

13 APPEARANCES:

14 JOHN T. ELFVIN, United States Attorney,
15 appearing on behalf of The United States:
16 ROBERT STEWART, Esq., and DENNIS O'KEEFE,
17 Esq., Attorneys, U.S. Department of
18 Justice, of Counsel.

19 HERALD P. FAHRINGER, Esq., appearing on
20 behalf of the Defendant.

21 BROWN, KELLY, TURNER, HASSETT & LEACH,
22 appearing on behalf of the Witness
23 WILLIAM LEWIS; OGDEN R. BROWN, Esq., of
24 Counsel.
25

1 PROCEEDINGS: December 4, 1974, 2:35 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury not present.)

5
6 MR. STEWART: If it please the Court, if I
7 may, I want to put one matter on the
8 record. Mr. Brown is here representing
9 Mr. Lewis, the first witness, and it is
10 my understanding Mr. Lewis is testify-
11 ing in this case pursuant to a direc-
12 tive of this Court which was signed on
13 May 9th and I have a copy of that order,
14 so I did want the record to reflect
15 that was the situation.

16 THE COURT: If there is any question, Mr.
17 Lewis, will you step up, please. Mr.
18 Brown, is it your understanding, Mr.
19 Brown, that that is the case?

20 MR. BROWN: That is correct, your Honor.

21 THE COURT: You are directed to testify by
22 the Court and in return for that, you
23 receive immunity provided for under
24 Title 18, Sections 6001 and 6002, is
25 that correct, Mr. Stewart?

Proceedings, dated 12-4-75.

1 MR. STEWART: That is correct, your Honor.
2 THE COURT: The Government cannot use any
3 answers given by you in any proceeding,
4 in any proceedings or any information
5 obtained from the answers to proceed
6 against you at any time.
7 MR. STEWART: Except, I may say, your Honor,
8 with respect to perjury committed
9 during the proceedings or false declar-
10 ations.
11 THE COURT: That is certainly true.
12 MR. STEWART: Or contempt.
13 THE COURT: Very well. We are ready for the
14 jury?
15 MR. BROWN: Your Honor, may my appearance be
16 noted on the record for Mr. Lewis?
17 THE COURT: Certainly.
18 MR. BROWN: Thank you.
19 THE COURT: Mr. Brown, I think it is best
20 when Mr. Lewis testifies if you would
21 just sit in an ordinary place back
22 there.
23 MR. BROWN: I will be back in the spectators
24 section, yes, your Honor. I will not
25 be up here.

1 THE COURT:

No attention will be called to the fact, Mr. Stewart, - you need not call to the jury's attention that Mr. Brown is here.

5 MR. STEWART:

No, your Honor.

6 MR. FAHRINGER:

I don't think right now I intend to, but I don't want to be foreclosed.

8 THE COURT:

I won't foreclose you. I do not think it is inappropriate for you, but I think it is for the Government.

11 MR. STEWART:

Okay. If Mr. Lewis gets into difficulty, Mr. Brown is here. I have never seen a witness come off the stand, but I assume it is possible.

15 THE COURT:

All right.

16

17

18

19

20

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25

THE COURT:

Mr. Stewart, you may call your first witness.

MR. STEWART:

The Government will call William

(Jury returns at 2:38 p.m.)

(Government Exhibits numbered 1 through 81, inclusive and respectively, marked for identification.)

William Lewis for Government, Direct.

Lewis to the stand.

1
2
3 W I L L I A M L E W I S (329 Howard Avenue, West Ellicott,
4 Jamestown, New York), a witness called by and in behalf of the
5 Government, having been first duly sworn, was examined and
6 testified as follows:
7

8 DIRECT EXAMINATION BY MR. STEWART:

9 Q Mr. Lewis, are you an employee of the AVM Corporation,
10 Jamestown, New York?

11 A Yes.

12 Q How long have you been employed by the AVM Corporation
13 of Jamestown?

14 A Since April 1st of 1964.

15 Q And between 1965 and 1972, what was your position with
16 the AVM Corporation?

17 A Secretary-treasurer.

18 Q All right, sir. Can you tell us, please, who the
19 president of the corporation was during those years?

20 A L. A. Dixon, Jr.

21 Q All right, sir. Do you see L. A. Dixon, Jr. in the
22 courtroom today?

23 A Yes, sir.

24 Q Will you point to him, please?

25 A Over there, sir.

- 1 Q All right. For the record, indicating the defendant
2 seated at counsel table. How long have you known Mr.
3 L. A. Dixon, Jr.?
- 4 A Since about 1938.
- 5 Q All right, sir. In fact, you were in school together,
6 weren't you?
- 7 A Yes, sir.
- 8 Q Now, Mr. Lewis, I show you an item which has been pre-
9 marked as Government's Exhibit 1, and excluding the
10 first page which bears a seal on it, I would like you
11 to examine that document and can you tell us, sir,
12 if that is the registration form for AVM Corporation
13 with the Securities and Exchange Commission?
- 14 A Yes, sir.
- 15 Q And that was filed, I believe, in April of 1965, is
16 that correct?
- 17 A It will have a date, if I can find it. April 28, 1965.
- 18 Q All right, sir. Now, I take it then that the AVM
19 Corporation was a so-called publicly traded company
20 which was registered with the Securities and Exchange
21 Commission?
- 22 A Yes, sir.
- 23 Q And was that true in the years 1970 and 1971 also?
- 24 A Yes, sir.
- 25 Q Now, I show you here an item which has been premarked

William Lewis for Government, Direct.

1 as Government Exhibit 2 for identification purposes
2 and can you tell us what this particular item is?

3 A. It is the General Ledger from AVM Corporation reflect-
4 ing an Accounting Account 2510 and the bank's account
5 for Mr. L. A. Dixon, Jr.

6 Q All right, sir. Is that a so-called Travel Advance
7 Account?

8 A. Travel Advance Account, yes, sir.

9 Q For Mr. Dixon, Jr.?

10 A. Yes, sir.

11 Q And that is for the year 1970?

12 A. Yes, sir.

13 Q All right. With the Court's permission, I would like
14 to put this up on the board because we will be referring
15 to this throughout, your Honor. All right, sir.

16 Now, can you tell us, as of January 1st, 1970, what
17 the carryover indebtedness of this particular account
18 is? Are you able to see it?

19 A. No, sir, I can't see it.

20 Q I'm sorry.

21 THE COURT: Mr. Stewart - -

22 MR. STEWART: Yes.

23 THE COURT: The jury cannot see that. They
24 will never be able to see it and it
25 seems to me nobody is going to be able

William Lewis for Government, Direct.

1 to understand it if we continue this
2 way. Nobody here disagrees with any
3 of these items. I hate to interrupt.
4 I think it probably is unfair to you to
5 do it, but we have gone over this
6 before. You are going to refer to a
7 number of items here where it would be
8 absolutely impossible for the jury to
9 see these items up on the board. It
10 will not make any sense at all to the
11 jury to put anything up on the board
12 at all.

13 MR. STEWART:

All right, sir.

14 THE COURT:

This can all be taken care of by
summary.

16 MR. STEWART:

All right, sir.

17 THE COURT:

If you think it is important to
18 have Mr. Lewis identify these items,
19 go ahead and have him do it.

20
21 BY MR. STEWART:

22 Q All right, sir. Now, again with respect to Government's
23 Exhibit 2, can you tell us what the indebtedness was
24 as of January 1, 1970 as represented by that particular
25 account?

William Lewis for Government, Direct.

1 A. \$13,800.

2 Q All right, sir, and is that money which Mr. Dixon
3 owed to the AVM Corporation?

4 A Yes, sir.

5 Q Now, you are referring here to the debit column of
6 this particular document. Immediately under that
7 there appears the figure \$28,000, is that correct?

8 A Yes, sir.

9 Q Now, sir, that is, - the date of that particular entry
10 that that entry was posted, can you tell us what that
11 is?

12 A Well, it is posted on February 28th by journal entry.

13 Q I show you a document which has been premarked
14 Government's Exhibit 3 for identification purposes.
15 Can you tell us what this is?

16 A Yes, sir. It is an AVM Corporation check drawn on
17 the bank dated - -

18 THE COURT: Mr. Lewis, I think that Mr.
19 Knisley and I are both having diffi-
20 culty hearing you. Will you pull that
21 down a little bit and speak a little
22 slower, please.

23 THE WITNESS: This is a check, an AVM Corpora-
24 tion check drawn on Mellon National
25 Bank and Trust Company, Pittsburgh,

William Lewis for Government, Direct.

Pennsylvania, dated January 29, 1970,
drawn to the order of L. A. Dixon, Jr.
in the amount of \$28,000.

BY MR. STEWART:

Q All right, sir, and on the back of that particular
check, can you tell me, please, whose signature that
is as having endorsed the check?

A L. A. Dixon, Jr.

Q All right. Now, attached to that item, which is pre-
marked Government's Exhibit 4, can you tell us what that
particular document is?

A It is an internal accounting form used to request a
check.

Q All right. That is the check which you refer to as
Government's Exhibit 3?

A Yes, sir.

Q And would you tell us, please, exactly who it was that
requested that that \$28,000 check be cut or drawn?

A It was requested by me by phone to our Accounting
Department.

Q All right, sir. Now, what was the date that you re-
quested that that check be drawn?

A January 29th.

Q And for what reason did you request that a \$28,000

1 check be drawn to the benefit of Mr. Dixon, Jr.
2 A Upon his request.
3 Q All right. Now, does that document show how that
4 sum was to be treated within the corporation?
5 A Yes, sir.
6 Q And how was it to be treated?
7 A It was to be debited to Account 2510, Mr. L. A. Dixon,
8 Jr.
9 Q All right, and is that the account that you have
10 identified as Government Exhibit 2?
11 A Yes, sir.
12 Q Now, as a result of that particular voucher or request
13 by you, which then becomes a voucher, is there another
14 document that is created?
15 A There is a journal entry made.
16 Q All right.
17 A Which reflects the issuance of the check.
18 Q All right. Showing you - -
19 A And other checks that may be issued.
20 Q All right. Showing you Government Exhibit 5, can you
21 identify that?
22 A Yes, sir.
23 Q And what is that?
24 A It is a journal entry.
25 Q All right. Now, on that particular journal entry,

William Lewis for Government, Direct.

1 can you tell me where this voucher which is Government
2 Exhibit 4 is reflected?

3 A It is part of this twenty-seven thousand eight hundred
4 charged to 2510.

5 Q 2510, referring to the account, is that correct?

6 A Yes, sir.

7 Q And that results in the \$28,000 debt being posted on
8 Government Exhibit 2?

9 A Yes, sir.

10 Q All right. Now, the next item on Government's Exhibit
11 2 is a \$4,000 item, is it not?

12 A Yes, sir.

13 Q And referring now to Government Exhibit 6, can you
14 tell us what that is?

15 A This is also an AVM Corporation check dated February
16 26, 1970 in the amount of \$4,000 payable to L. A.
17 Dixon, Jr.

18 Q Is that check endorsed?

19 A Yes, sir.

20 Q All right, and by whom is it endorsed?

21 A It is typed on the back "For deposit only to the
22 account of Lloyd A. Dixon, Jr.".

23 Q All right, sir. Now, directing your attention to
24 Government Exhibit 7, can you tell us who it was that
25 ordered that that particular check, - that particular
check to be cut or drawn?

William Lewis for Government, Direct.

1 A I did.

2 Q And what were the circumstances under which you ordered
3 that check to be drawn?

4 A Mr. Dixon's instructions.

5 Q All right, sir. Do you,-by the way, do you know what
6 the purpose of the \$28,000 check which is Government's
7 Exhibit 3 in January, do you know what that \$28,000
8 was for?

9 A No, sir.

10 Q Do you know what the \$4,000 check in February 26, do
11 you know what that was for?

12 A No, sir.

13 Q And to what account was that debited?

14 A To the Advance Account 2510.

15 Q All right, so this is, - strike that. All right, and
16 referring now to Government's Exhibit 8, is that the
17 journal entry which explains how the, - what happened
18 with respect to this voucher?

19 A Yes, sir.

20 Q And that ultimately results in this \$4,000 debit being
21 posted on the 2510 account, that is Government's Exhibit
22 2, is that correct?

23 A Yes, sir.

24 Q All right. By the way, in this column, which precedes
25 the debit account, it is marked "references", is it not?

William Lewis for Government, Direct.

1 A Yes, sir.

2 Q Do each one of these numbers in the reference column
3 refer back to the journal entry?

4 A Yes, sir.

5 Q And from the journal entry you then get to the voucher,
6 is that right; you can then locate the voucher?

7 A Yes, sir.

8 Q All right. Now, and with the voucher there will always
9 be a duplicate copy of the check, is that correct?

10 A Yes, sir.

11 Q That is the - -

12 A The yellow copy.

13 Q Yellow copy. All right, sir. Now, after the March
14 entry of \$4,000, the next entry is \$13,000 on the
15 general ledger, is that correct?

16 A Yes, sir.

17 Q Now, I show you Government Exhibit 9. Can you tell us
18 what that is?

19 A This is also another check drawn, AVM Corporation check
20 dated April 2nd, drawn on the Mellon Bank, payable
21 to L. A. Dixon, Jr. in the amount of \$3,000.

22 Q Slow down, Mr. Lewis. Take your time. Now, Mr. Lewis,
23 this particular check, can you tell me who the
24 endorsee was on that?

25 A It is typed on the back "Deposit only to the account

William Lewis for Government, Direct.

1 of Lloyd A. Dixon, Jr."

2 Q All right, and can you tell me that was, in fact,
3 deposited?

4 A Marine Midland Bank in Jamestown, it shows their
5 endorsement.

6 Q All right, sir. Now, the entry on the general ledger
7 is for the sum of \$13,000, is it not?

8 A Yes, sir.

9 Q All right, and this is a \$3,000 check?

10 A Yes, sir.

11 Q Now, who was it that ordered that this check be drawn?

12 A It was requested by Mr. Dixon, approved by J. T.
13 Lyons and also signed by Mr. Phil Sloan who was in
14 charge of the Accounting Department.

15 Q That is Government Exhibit 10, is that right?

16 A Yes, sir.

17 Q Now, referring to Government Exhibit 11, can you tell
18 us what that is?

19 A Yes, sir. This is an AVM Corporation check dated
20 April 24, 1970 in the amount of \$10,000 payable to
21 L. A. Dixon, Jr.

22 Q And how was that handled for purposes of endorsement?

23 A Again typed on the back of the check "For deposit only
24 to the Account of Lloyd A. Dixon, Jr."

25 Q All right. Now, referring to Government's Exhibit 12,

William Lewis for Government Direct.

1 can you tell us who ordered that particular check?

2 A I did by phone to our Accounting Department and also
3 Mr. Regan's signature is on it.

4 Q Do you know for what the \$3,000 in Government Exhibit
5 9 or the \$10,000 in Government's Exhibit 11, do you
6 know what either of those items were for?

7 A No, sir.

8 Q But you did order this \$10,000 item, right?

9 A Upon request of Mr. Dixon, yes, sir.

10 Q All right. Now, referring to Government's Exhibit 13,
11 that is a journal entry, is it not?

12 A Yes, sir.

13 Q And does that particular exhibit consolidate these
14 two checks?

15 A Yes, sir.

16 Q And result in being posted as a single \$13,000 item
17 on Government's Exhibit 2?

18 A Yes, sir.

19 Q Now, the next entry is a \$5,000 item, is it not?

20 A Yes, sir.

21 Q All right. Referring your attention now to Government's
22 Exhibit 14 for identification purposes, can you tell
23 us, please, what that is?

24 A It is also a check drawn on the Mellon Bank by AVM
25 Corporation, dated May 15, 1970, in the amount of

1 \$5,000 payable to L. A. Dixon, Jr.

2 Q All right, sir, and who is the endorsee on that?

3 A The endorsement is the same as the previous check.

4 Q That is to the account.

5 A "For deposit only to the account of L. A. Dixon, Jr."

6 Q All right. Now, the voucher for that particular check
7 is premarked as Government's Exhibit 15, is it not?

8 A Yes, sir.

9 Q And that also charges it to the 2510 advance account,
10 does it not?

11 A Yes, sir.

12 Q Now, can you tell us who requested this particular
13 advance?

14 A There is no name under the request. It has been
15 approved by Mr. Regan. I cannot recollect exactly
16 how it was requested of him. It may have been by me
17 by phone and in preparing this in the Accounting
18 Department, they may have left my name off as being
19 instructed by phone, but this would be not unusual.

20 Q All right. That would not be unusual?

21 A Not necessarily, no, sir.

22 Q And Mr. Regan is someone in the Accounting Department?

23 A He was comptroller at that time.

24 Q Okay. Now, directing your attention to Government's
25 Exhibit 16, is that the general ledger or the journal

William Lewis for Government, Direct.

1 entry?

2 A. Journal, yes, sir.

3 Q. For this particular check?

4 A. Yes, sir.

5 Q. All right. Do you have any idea what this \$5,000 was
6 for?

7 A. No, sir.

8 Q. All right, sir. Now, the next entry on Government's
9 Exhibit 2 is a \$6,500 item for September, is that
10 correct?

11 A. Yes, sir.

12 Q. Now, I show you Government's Exhibit 17 for identifica-
13 tion purposes. Can you tell us what that is?

14 A. It is also another check by AVM Corporation dated
15 September 23, 1970, the amount of \$6,500, payable to
16 L. A. Dixon, Jr.

17 Q. And who is the endorsee on that one?

18 A. Again "For deposit only to the account of L. A. Dixon,
19 Jr.".

20 Q. All right. As with the others, it was, in fact,
21 machine stamped by the bank as deposited, is that right?

22 A. Yes, sir.

23 Q. Now, the voucher for that particular check is premarked
24 as Government's Exhibit 18, is it not?

25 A. Yes, sir.

William Lewis for Government, Direct.

- 1 Q And who was it that requested that particular advance?
- 2 A I did.
- 3 Q And why did you request that advance?
- 4 A Upon Mr. Dixon's request.
- 5 Q And the journal entry for that particular transaction
- 6 is Government's Exhibit 19, is it not?
- 7 A Yes, sir.
- 8 Q And that was, - then became a debit to the 2510 account.
- 9 A Yes, sir.
- 10 Q Is that correct?
- 11 A Yes, sir.
- 12 Q Do you know the reason for this particular \$6,500
- 13 advance?
- 14 A No, sir.
- 15 Q Now, the next entry that appears on the general ledger,
- 16 Government's Exhibit 2, is in a different column and
- 17 appears in red letters. Can you tell us what that
- 18 represents?
- 19 A It is a credit or reduction of the liability.
- 20 Q All right, sir. Now, the check, Government's Exhibit
- 21 17, is cashed or issued on the 23rd and deposited on
- 22 the 24th, is that correct?
- 23 A Yes, sir.
- 24 Q All right. Can you tell us, please, when this credit,
- 25 when the payment occurred paying back the money to the

William Lewis for Government, Direct.

- 1 AVM Corporation, and I refer your attention, specifically
2 to Government's Exhibits 20 and 21
3 A. September 25th.
4 Q. All right. Now, this Government's Exhibit 21, can you
5 tell us what kind of document that is?
6 A. This is a cash received journal.
7 Q. All right, and this reflects money which has been
8 received by the corporation and which has been deposited
9 in the corporate account, is that correct?
10 A. Yes, sir.
11 Q. Now, sir, the AVM Corporation, at that time, 1970,
12 had accounts in the Marine Midland Bank and in the
13 Mellon Bank, did it not?
14 A. Yes, sir.
15 Q. This is the reference in pencil in the right-hand
16 bottom of that page, Marine, does that refer to the
17 Marine Midland Bank?
18 A. Yes, sir, I think so.
19 Q. All right. Now, the documents which are, - strike
20 that. You have under received from, the words L. A.
21 Dixon, Jr. and then the word advance the sum of \$6,500
22 over here under sundry credits, you have \$6,500, and
23 then you have an account number and the account number
24 appears to be 2510, is that correct?
25 A. Yes, sir.

William Lewis for Government, Direct.

1 Q Does that, when it is set up that way, the entry, does
2 that cause the posting on the 2510 account of a credit
3 in the amount indicated?

4 A Yes, sir.

5 Q Now, with respect to how this particular document came
6 into existence, - that is the cash received journal,
7 I direct your attention, specifically, to Government's
8 Exhibit 20. Can you tell us what this is?

9 A This is an AVM Corporation deposit ticket to Marine
10 Midland, Chautauqua National Bank.

11 Q Now, first of all, what is the amount of the deposit?

12 A \$6,500.

13 Q And does that indicate whether that \$6,500 is cash
14 or in the form of a check or coin?

15 A Cash.

16 Q All right, sir, and is that a single item?

17 A Yes, sir.

18 Q Now, the date of deposit, according to the machine
19 stamp is September 25th, is that right?

20 A Yes, sir.

21 Q And attached to that, - to the deposit slip is an
22 envelope. Can you tell us what the notation on the
23 envelope refers to?

24 A It has the sum of \$6,500 on it and L. A. Dixon, Jr.
25 advance, and indicating a credit to that.

William Lewis for Government, Direct.

- 1 Q All right, and that is what caused the \$6,500 to be
2 credited to his 2510 account, is that right?
- 3 A Yes, sir.
- 4 Q Now, Mr. Lewis, you have indicated that you were the
5 one who originally ordered, on Mr. Dixon's directions,
6 the \$6,500 check that was payable to him and was
7 deposited to his account on the 24th. Can you tell us,
8 please, sir, why he gives the AVM Corporation back
9 \$6,500 the next day?
- 10 A No, sir, I can't.
- 11 Q Now, referring you to Government's Exhibit 22 for
12 identification purposes, can you tell us, please, what
13 that is, sir?
- 14 A Again, an AVM Corporation check dated October 21, 1970
15 in the amount of \$11,000 payable to L. A. Dixon, Jr.
- 16 Q All right, sir, and who is the endorsee on that,
17 please?
- 18 A Again, the endorsement is typed "For deposit only to
19 the account of Lloyd A. Dixon, Jr.".
- 20 Q And it was deposited?
- 21 A Yes, sir.
- 22 Q All right, sir. Now, the voucher for that particular
23 check is Government's Exhibit 23, is it not?
- 24 A Yes, sir.
- 25 Q And who was it that ordered that particular \$11,000

1 advance?

2 A. I did.

3 Q. And that is on the 2510 account?

4 A. Yes, sir.

5 Q. And was that pursuant to Mr. Dixon's directions?

6 A. Yes, sir.

7 Q. Do you recall the circumstances under which Mr. Dixon
8 directed you to order this particular \$11,000 advance?

9 A. No, sir, I do not.

10 Q. All right. Now, Government's Exhibit 24, is that the
11 journal entry which relates to the voucher, Government's
12 Exhibit 23?

13 A. Yes, sir.

14 Q. And it is from this journal entry that the debit of
15 \$11,000 is entered over here on the general ledger
16 sheet, is that correct?

17 A. Yes, sir.

18 Q. By the way, the date that the entry is made on the
19 general ledger sheet, that is the posting date, that
20 does not, necessarily, reflect the date that the check
21 is actually issued or the date of the voucher, is that
22 correct?

23 A. That is correct.

24 Q. It would normally be later?

25 A. Yes, sir.

William Lewis for Government, Direct.

- 1 Q Now, with respect to Government's, - or, I direct your
2 attention now to Government's Exhibit 25 through 28.
3 If you will, sir, looking at the credit column on
4 either side of the \$11,000 entry, there is an \$8,000
5 repayment and a \$3,000 repayment, is that correct?
- 6 A Yes, sir.
- 7 Q For a total of \$11,000, is that right?
- 8 A Yes, sir.
- 9 Q All right, sir. Now, with respect to these items
10 which are 25 through 28, can you tell us, sir, that, -
11 what is Government's Exhibit 25?
- 12 A It is a deposit ticket dated October 22nd for \$3,000
13 cash.
- 14 Q All right, and accompanying or attached to that, can
15 you tell us what this item is?
- 16 A It is an envelope with L. A. Dixon, Jr.'s name on it,
17 indicating a credit to his account.
- 18 Q Of \$3,000.
- 19 A \$3,000, yes, sir.
- 20 Q All right, sir, and that is the 2510 account, right?
- 21 A Yes, sir.
- 22 Q Now, Government's Exhibit 26, that is a deposit ticket
23 for \$5,000 cash?
- 24 A Yes, sir.
- 25 Q On the 23rd of October, right?

William Lewis for Government, Direct.

1 A Yes, sir.

2 Q And Government's Exhibit 27 is a deposit ticket on
3 October 27th for \$3,000?

4 A Yes, sir.

5 Q Each one with an envelope?

6 A Yes, sir.

7 Q Each one, each envelope directing credit to Mr. Dixon's
8 2510 account, right?

9 A Yes, sir.

10 Q And that is the, - referring to Government's Exhibit
11 28, is this the cash received journal that causes these
12 entries to be made, the credit of eight thousand and
13 three thousand?

14 A Yes, sir.

15 Q Again, can you tell us, please, the reason that Mr.
16 Dixon took an advance of \$11,000 on October 21st and
17 then proceeded to pay back \$3,000 in cash on October
18 22nd; \$5,000 in cash on October 23rd and twenty-seven
19 thousand, - or \$3,000 in cash on October 27th?

20 A No, sir.

21 Q You have no idea at all?

22 A No, sir.

23 Q All right, sir. Now, putting aside the two, the last
24 two transactions, one for \$6,500, which was repaid within
25 a day or two, and one for \$11,000, which was repaid

1 also within a period of three or four days, can you
2 tell us, please, from May 31st of 1970 down into
3 December of 1970, what the balance of this account was?

4 A May 31st the balance was \$63,800.

5 Q All right, sir.

6 A What was the other date, sir?

7 Q Down into December of 1970 before the corrections.

8 A \$63,800.

9 Q All right, sir, so that the balance remained constant
10 then between the end of May and early December at
11 \$63,800, is that correct, with the exception of the
12 two circular, the two transactions which were repaid
13 almost immediately.

14 MR. FAHRINGER: Your Honor, of course, I object
15 to circular transaction.

16 MR. STEWART: Withdraw the word "circular".

17 THE COURT: Strike that. We have covered
18 that anyway, Mr. Stewart. Can we
19 move on, please?
20

21 BY MR. STEWART:

22 Q Yes. All right, sir. Now, I show you Government's
23 Exhibit 79 and referring to the document at the top of
24 the page, can you tell us what that is, please?

25 A These are confirmation requests issued at the request

William Lewis for Government, Direct.

1 of Ernst & Ernst for balances of various accounts
2 and signed by me.

3 Q All right, sir. Now, with respect to the top document,
4 can you tell us who that relates to?

5 A L. A. Dixon, Jr.

6 Q All right, and what is the total indebtedness reflected
7 there as of November 30, 1970?

8 A \$68,868.08.

9 Q And is that broken down in any way?

10 A It is broken down into two items, sixty-three thousand
11 eight hundred as an advance and four thousand o sixty-
12 eight o eight as miscellaneous receivable.

13 Q All right, sir. Now, I show you Government's Exhibit
14 43 for identification purposes. Can you tell me what
15 that is?

16 A It is an account, General Ledger Account Number 2512-02
17 which is an employee receivable account for L. A.
18 Dixon, Jr.

19 Q All right, sir, and what is the indebtedness there as
20 of January 1, 1970?

21 A Four thousand o sixty-eight o eight.

22 Q And it's that amount reflected in confirmation or
23 Government's Exhibit Number 79?

24 A Yes, sir.

25 Q Now, that is November 30, 1970. I direct your

William Lewis for Government, Direct.

1 attention to Government's Exhibit 29. Is that a memo
2 which you received from the Accounting Department
3 breaking down the account of Mr. Dixon?

4 A Yes, sir.

5 Q And after you received this memorandum, what, if anything,
6 did you do?

7 A I either forwarded a copy to Mr. Dixon so that he was
8 advised of the breakdown of the account and what his
9 balance was.

10 Q All right, sir. Did you have any, - Strike that.
11 Was that, - That would have been after the time that
12 the confirmation was signed, is that correct?

13 A Well, the memo was dated December 2nd.

14 Q All right. Now, did you have a conversation sometime
15 around December 2nd with Mr. Dixon regarding the handling
16 of particular accounts, 2510 and 2512 accounts.

17 A I don't recall the situation, but he, perhaps, had
18 asked for a breakdown. I don't recall. I would assume
19 that he may have asked for a breakdown.

20 MR. FAHRINGER: Your Honor, I object to the
21 assume.

22 THE COURT: Mr. Lewis, if you do not know,
23 please do not guess. You cannot go
24 upon what you think or what you assume.
25 You must give us your best recollection

1 of what occurred.

2 BY MR. STEWART:

3 Q All right, sir. If you will, look at Government's
4 Exhibit 30, please, and tell us what that is?

5 A The information was given to Mr. Dixon.

6 Q All right, sir, and then if you will, refer to
7 Government Exhibit 30 and can you tell us what that
8 is?

9 A It is a memo from me to Miss Johnson.

10 Q And who is Miss Johnson?

11 A She was in charge of, - she worked in the Accounting
12 Department.

13 Q All right, sir, and the memorandum reflects or directs
14 Miss Johnson to reclassify five thousand and four
15 thousand dollars from the account of Mr. Dixon, Jr.
16 to Mr. Dixon, Sr., is that correct?

17 MR. FAHRINGER: Your Honor, if it please the
18 Court, I have been indulgent, but I am
19 going to object to that type of leading
20 at this juncture.

21
22 BY MR. STEWART:

23 Q I will withdraw the question. Tell us what the
24 memorandum is, please?

25 A I am advising Miss Johnson to reverse the debits in

1 Mr. Dixon, Jr.'s account and transfer it to Mr. Dixon,
2 Sr.

3 Q All right, sir, and why did you do that?

4 A On the advice of Mr. Dixon, Jr.

5 Q Well, when did that conversation take place in which
6 Mr. Dixon, Jr. advised you to do that?

7 A There is no - -

8 Q If you remember.

9 A The date of the memo - -

10 THE COURT: As I understand the position of
11 the defendant, Mr. Fahringer, you
12 agree that this was done and there is
13 no challenge to this transaction?

14 MR. FAHRINGER: No, your Honor. I mean, I agree
15 there is no challenge to the transac-
16 tion, but I am concerned about what
17 the conversation was.

18 THE COURT: Right. I think we can move on,
19 Mr. Stewart.

20
21 BY MR. STEWART:

22 Q Do you know why it was that Mr. Dixon directed you
23 to reclassify these two items?

24 MR. FAHRINGER: Well, I object to that.

25 THE COURT: There is an objection to that and

1 I sustain the objection. I think it
2 is immaterial what Mr. Lewis thought
3 the purpose was in Mr. Dixon's mind
4 unless he knows, unless Mr. Dixon
5 said something to him.

6 MR. STEWART:

Yes, sir, that was part of my
7 question, not what Mr. Lewis thought,
8 but whether Mr. Dixon had told Mr.
9 Lewis why he was ordering him to re-
10 classify these items.

11 MR. FAHRINGER:

If it please the Court, I object
12 to ordering him to and things of that
13 sort, but I have no objection to the
14 question if - -

15 THE COURT:

What was said? Did Mr. Dixon
16 say anything to you about this?

17 THE WITNESS:

He advised me that these should
18 have been charged to his father rather
19 than to him.

20
21 BY MR. STEWART:

22 Q All right, sir. Now, the two items, the \$4,000 and
23 the \$5,000 items, referring now to Government's
24 Exhibit 2, the general ledger card, are those the
25 entries that appear on March 31st and May 31st?

William Lewis for Government, Direct.

1 A Yes, sir.

2 Q All right, and did Mr. Dixon, Jr. tell you at that time,
3 or during that conversation, why the items should have
4 been charged to his father's account and not to his
5 account?

6 A No, sir. I don't recall.

7 Q All right. Now, Government's Exhibit 31 is the
8 journal entry that causes the reclassification, is that
9 correct?

10 A Yes, sir.

11 Q And can you tell us where that appears on the general
12 ledger? That is, where is it posted in the general
13 ledger?

14 A Right here.

15 Q That is under the date December 31st?

16 A 31st, yes, sir.

17 Q Okay, and that is the one that brings the overall balance
18 down to \$19,100 as of December 31st, is that correct?

19 A In the general ledger, it does, yes, sir.

20 Q All right. Now, I show you an item, a combined item
21 which is marked Government Exhibit 34 for identification
22 purposes and can you tell us what the top part of that
23 exhibit is?

24 A It is a check, Mr. Dixon's check in the amount of
25 \$30,000 payable to AVM Corporation.

- 1 Q All right, sir, and the date on that is what?
- 2 A December 28, 1970.
- 3 Q All right, and the note which is attached to that,
- 4 can you tell me what that is, please?
- 5 A It is a note from me to Miss Johnson again directing
- 6 her to deposit the check and credit Mr. Dixon's advance
- 7 account.
- 8 Q And the date on the note is what?
- 9 A 12-28.
- 10 Q All right, sir. Now, can you point to the, - Strike
- 11 that. I show you Government's Exhibit 33. Can you
- 12 identify that as being the deposit slip with which
- 13 this \$30,000 check is deposited to the AVM account?
- 14 A Yes, sir.
- 15 Q All right, and also Government's Exhibit 35, is this
- 16 the cash received journal which ultimately resulted in
- 17 the posting of the credit?
- 18 A Yes, sir.
- 19 Q Okay, and the credit was posted on what date, the
- 20 \$30,000?
- 21 A December 23rd.
- 22 Q All right. Now, there are, - in there, there are one,
- 23 two, three, four notations which are crossed over to-
- 24 gether with a notation corrections typed out here in
- 25 the margin. Are you able to explain what those are so

William Lewis for Government, Direct.

1 we know?

2 A. Evidently, the posting clerk, in posting the entry,
3 posted \$30 as a credit, which was in error. She then
4 posted a \$30 debit to make the correction. She again
5 made an error in posting the \$30,000 as a debit to his
6 account and she then made a credit to correct that one
7 and then she posted properly the \$30,000 as a credit.

8 Q. All right, sir. Now, I show you Government's Exhibits
9 42, 44, 45, 46 and 47. Can you tell us the circumstances
10 of this particular transaction?

11 A. The journal entry showing cash in transit which is a
12 recording of the cash received at the end of the year
13 which would be deposited after the end of the year.

14 Q. All right, sir. Does that relate then to, - that is
15 Government's Exhibit 42. Does that relate to the
16 check which is Government's Exhibit 45?

17 A. Yes, sir.

18 Q. And that check, I believe, is dated December 31, and
19 can you tell us whose account that is on?

20 A. L. A. Dixon, Jr.

21 Q. And it is payable to the AVM Corporation?

22 A. Yes, sir.

23 Q. Now, you created a journal entry called cash in transit
24 for that, did you not?

25 A. Yes, sir.

- 1 Q. And do you know whether that check was in the AVM
2 offices on December 31st or was in transit on December
3 31, 1970?
- 4 A. I believe it was in Jamestown.
- 5 Q. Where was Mr. Dixon at that time?
- 6 A. I don't remember.
- 7 Q. Now, this particular check is in the amount of
8 \$4,768, is that correct?
- 9 A. Yes, sir.
- 10 Q. All right. Now, how much of that check was ultimately
11 applied to the 2510 account?
- 12 A. \$700.
- 13 Q. And how much of it was then applied, - where did the
14 balance go?
- 15 A. The balance went to the other employee's account
16 2512.
- 17 Q. All right, sir, and that is Government's Exhibit
18 43, is it not?
- 19 A. Yes.
- 20 Q. And this particular check was Mr. Dixon's, had the
21 effect of completely reducing the indebtedness in the
22 2512 account, is that right?
- 23 A. Yes, sir.
- 24 Q. All right, sir. I show you now, Government's Exhibits
25 36 through 41. Government's Exhibit 36, can you tell

1 us what that is, please?

2 A It is an AVM check dated December 28th, payable to
3 William Lewis in the amount of \$5,000.

4 Q Sir, and that is you, is it not?

5 A Yes, sir.

6 Q Now, who was it that ordered that particular check?

7 A I requested it.

8 Q All right, and the date of that request was what?

9 A 12-28.

10 Q And what were the circumstances under which you
11 requested this \$5,000 advance?

12 A Mr. Dixon and I had discussed the idea of having this
13 account under \$20,000 at year end. He had made these
14 previous reductions of the account and the account was
15 not below \$20,000 and I took \$5,000 advance to loan it
16 to Mr. Dixon and I added it to his account to bring it
17 below \$20,000.

18 Q All right, sir. Now, do you know where Mr. Dixon was
19 at the time you had this conversation?

20 A I believe he was in Florida.

21 Q And do you know when the conversation was in relation
22 to the date that you made the request as evidenced by
23 the voucher?

24 A 12-28.

25 Q Same day?

William Lewis for Government, Direct.

- 1 A I would say so, yes.
- 2 Q All right, sir. How did you cash the check?
- 3 A I endorsed the check and had Mr. Porterfield go to the
- 4 bank and cash the check.
- 5 Q And who is Mr. Porterfield?
- 6 A He works at AVM.
- 7 Q What did Mr. Porterfield do with the cash?
- 8 A Brought it back to the company and it was deposited
- 9 in the company's account and credited to Mr. Dixon's
- 10 account.
- 11 Q All right, sir. Referring to Government's Exhibit 40
- 12 and 41, does Government's Exhibit 40, - Strike that.
- 13 Is Government Exhibit 40 the deposit ticket for the
- 14 \$5,000 cash which you had obtained?
- 15 A Yes, sir.
- 16 Q And Government's Exhibit 41, is that the cash received
- 17 journal which ultimately causes the general ledger, the
- 18 balance on the general ledger to be reduced below
- 19 twenty thousand?
- 20 A Yes, sir.
- 21 Q Now, you took, - this check was charged to your 2510
- 22 account, was it not?
- 23 A Yes, sir.
- 24 Q And I show you now, Government's Exhibit 39. Can you
- 25 tell us what that is?

1 A This is a general ledger card for 2510 advance account
2 in my name.

3 Q All right, and what was the indebtedness at January
4 1st?

5 A \$200.

6 Q All right, and there was no action between January 1st
7 and December 31st, is that right?

8 A No, sir.

9 Q And then you took the \$5,000 advance on December 31st,
10 is that correct?

11 A December 28. It is posted December 31st.

12 Q All right, December 28th, posted December 31st. Mr.
13 Lewis, why did you cause a check to be drawn on the
14 AVM account and sent Porterfield to the bank to get
15 the money, the cash and then deposit the cash as
16 opposed to just debiting your 2510 account, - yes,
17 debiting your 2510 account and crediting Mr. Dixon's
18 2510 account?

19 A Because I was taking an advance from the company and
20 putting liability on me and effect loaning to Mr. Dixon
21 \$5,000.

22 Q Well, that is exactly what had occurred with respect
23 to the reclassification of the \$9,000, wasn't it?

24 MR. FAHRINGER: I object to that as leading.

25 THE COURT: All right, it is leading and I

1 sustain the objection. It is up to
2 the jury to take conclusions from all
3 of this, Mr. Stewart, and again, I
4 think keeping in mind the opening
5 statements made by both lawyers that
6 little of this, as far as the factual
7 material is in dispute, so I think it
8 can be covered very quickly. Let us
9 move on, please.
10

11 BY MR. STEWART:

12 Q All right, sir. Now, again referring back to Government's
13 Exhibit 79, there are two other confirmations which
14 appear on that exhibit and with respect to the second
15 or bottom exhibit on Page 1, can you tell us whose
16 confirmation that is?

17 A Mr. Dixon, Sr.

18 Q You recognize his signature?

19 A Yes, sir.

20 Q And you signed that one too, did you not?

21 A Yes, sir.

22 Q And the total amount of indebtedness reflected there
23 is how much?

24 A \$10,000.

25 Q And that is as of November 30th of 1970?

William Lewis for Government, Direct.

1 A Yes, sir.

2 Q And referring to Page 2 the confirmation there is who?

3 A William Lewis.

4 Q And that reflects a total indebtedness of \$5,200?

5 A Yes, sir.

6 Q As of December 31. All right, sir. Now, I would like

7 to refer you to Government's Exhibit 48. Can you tell

8 us what that is, please?

9 A It is a general ledger account 2510 for L. A. Dixon, Jr.

10 for the year of 1971.

11 Q All right, and that reflects indebtedness as of January

12 1st of \$19,100, is that right?

13 A Yes, sir.

14 Q It is a continuation, in other words, of Government

15 Exhibit 2, is that right?

16 A Yes, sir.

17 Q Now, I hand you an item which is premarked Government's

18 Exhibit Number 50. Can you tell me what that is, please?

19 A It is an AVM check dated February 1st, payable to

20 L. A. Dixon, Jr. in the amount of \$30,000.

21 Q All right, sir, and by examining Government Exhibit 51,

22 can you tell us who ordered that?

23 A I did.

24 Q All right, and can you tell us the circumstances under

25 which you ordered the \$30,000 advance for Mr. Dixon?

1 A On request of Mr. Dixon.

2 Q And that one bears a typed endorsement, is that right?

3 A Yes, sir.

4 Q Deposit.

5 A Yes, sir.

6 Q All right, sir. Now, referring to Government Exhibit
7 48, the general ledger sheet, there is an entry in
8 February, February of 1971 for the amount of \$35,300,
9 is that correct?

10 A Yes, sir.

11 Q All right. Now, this is thirty thousand, the
12 Government's Exhibit 50, the check, Government's
13 Exhibit 50, right?

14 A Yes.

15 Q All right, sir. I show you another check, Government's
16 Exhibit 52 and ask you if you can identify that, please?

17 A Again, an AVM check dated February 22nd, payable to
18 L. A. Dixon, Jr. in the amount of \$5,000.

19 Q All right, and who was it signed that check, by the
20 way?

21 A William Lewis and Philip Cardarople.

22 Q All right, sir, and referring now to the back of it,
23 can you tell me, please, who endorsed it?

24 A Mr. Dixon, Jr.

25 Q You recognize his signature?

William Lewis for Government, Direct.

1 A. Yes, sir.

2 Q. Now, referring to Government's Exhibit 53, the voucher,
3 can you tell us who ordered that, this check?

4 A. Mr. Dixon requested it and I approved it.

5 Q. All right, and from examining Government's Exhibit 54,
6 can you tell us then what was done with the \$5,000
7 cash?

8 A. It was deposited to AVM Corporation's account.

9 Q. Okay, and from a journal entry which is Government, -
10 Strike that. From the cash received journal which is
11 Government's Exhibit 55, can you tell us where that
12 \$5,000 deposit was credited?

13 A. To William Lewis' advance account.

14 Q. And now I show you Government's Exhibit 56. Can you
15 identify that, please?

16 A. This is a general ledger account 2510 advance, William
17 Lewis for 1971.

18 Q. All right, sir, and that reflects at the beginning of
19 the year you owed AVM Corporation \$5,200, is that
20 right?

21 A. Yes, sir.

22 Q. And it is not correct that this \$5,000 deposit is
23 reflected in February of 1971 as having been credited
24 to your account, thereby reducing your indebtedness to
25 \$200?

- 1 A Payment of Mr. Dixon, which was deposited and credited
2 to my account, yes, sir.
- 3 Q All right. When Mr. Dixon, - when you agreed to take
4 the \$5,000 advance in December of 1970, did Mr. Dixon
5 tell you when he would repay the money?
- 6 A He said that it would be paid in the near future.
- 7 Q And this was the repayment for that?
- 8 A Yes, sir.
- 9 Q All right, sir. Now, of the \$35,300 that is reflected
10 in the February entry, the February entry 2510, the
11 general ledger, there remains \$300 that we have not
12 accounted for thus far, is that right?
- 13 A Yes, sir.
- 14 Q All right. Now, I show you an item which is
15 Government's Exhibit 57 premarked. Can you tell us
16 what that is?
- 17 A Again, that is a check dated February 25, 1971 in the
18 amount of \$300 payable to L. A. Dixon, Jr.
- 19 Q All right, sir, and what is the endorsement on that
20 particular check?
- 21 A Again, "For deposit only to the account of L. A. Dixon,
22 Jr.".
- 23 Q And it is machine stamped, right?
- 24 A Yes, sir.
- 25 Q All right. Government's Exhibit 58 is the voucher.

1 Can you tell us who it was that ordered this \$300
2 advance?

3 A. I did.

4 Q And this was also charged to the 2510 account, right?

5 A Yes, sir.

6 Q Now, the journal entry is Government's Exhibit 59, is
7 it not?

8 A Yes, sir.

9 Q And that reflects the three checks, the \$30,000 check,
10 the \$5,000 check and the \$300 check, is that right, to
11 one entry?

12 A Yes, sir.

13 Q And that is why we have a thirty-five thousand three
14 hundred entry in February in the general ledger, is
15 that correct?

16 A Yes.

17 Q All right, sir. Going down to March, 1971, Government's
18 Exhibit 60, can you tell us, please, what that is, sir?

19 A Again, it is a check dated March 22nd, 1971, in the
20 amount of \$3,000, payable to L. A. Dixon, Jr.

21 Q And from the voucher for that, - that would be
22 Government's Exhibit 61, would it not?

23 A Yes, sir.

24 Q Can you tell us who it was ordered that?

25 A I did.

- 1 Q Do you know why this \$3,000 was, - Strike that.
2 Why did you order the \$3,000 check drawn to Mr. Dixon?
3 A Upon his request.
4 Q Do you know why he requested the \$3,000?
5 A No, sir.
6 Q And Government's Exhibit 62, is that the journal
7 entry for this particular transaction?
8 A There is, obviously, some combination here.
9 Q All right, sir. Referring to the back, does that
10 explain the other?
11 A Yes, sir, it is a combination.
12 Q And the amount going to Mr. Dixon, Jr. was - -
13 A \$3,000
14 Q Okay. Now, I show you an item which is Government's
15 Exhibit Number 63 for identification purposes. Can
16 you tell us what that is?
17 A It is a check payable to AVM Corporation in the amount
18 of \$3,000 by Mr. Dixon, Jr.
19 Q All right, sir, and Government Exhibit 64, which also
20 has a note attached, that is a cash received journal
21 for the Mellon Bank, is it not?
22 A Yes, sir.
23 Q And does that reflect the deposit of this particular
24 \$3,000 check?
25 A Yes, sir.

- 1 Q All right, and that became then a credit to the, -
2 on the account of Mr. Dixon for the 2510 account, is
3 that right?
- 4 A Yes, sir.
- 5 Q Now, Mr. Lewis, do you know why Mr. Dixon borrowed
6 \$3,000 on March 22nd and paid back \$3,000 on April 1st?
- 7 A No, sir.
- 8 Q All right, sir. Finally, Government's Exhibit 67 for
9 identification purposes, can you tell me what that is?
- 10 A Again, it is a AVM Corporation check dated May 24th
11 in the amount of \$8,000, payable to L. A. Dixon, Jr.
- 12 Q All right, sir, and can you tell me what the endorsement
13 is?
- 14 A L. A. Dixon, Jr., evidently signed by or initialed
15 "KI", which I assume, - not I assume, is Katherine
16 Illig.
- 17 Q Who is Miss Illig?
- 18 A Who was Mr. Dixon's secretary and on the back it is
19 typed "Deposit only to the account of Mrs. Lloyd A.
20 Dixon, Jr.
- 21 Q The voucher for that particular exhibit is Government
22 Exhibit Number 68, is it not?
- 23 A Yes, sir.
- 24 Q And who ordered that particular check?
- 25 A I did.

1 Q All right, and the journal entry for that particular
2 item is Government's Exhibit 69, is it not?
3 A Yes.
4 Q Now, directing your attention to Government's Exhibit
5 65, can you tell us what this is?
6 A It is a deposit ticket for \$10,088.
7 Q Is that cash or a check?
8 A \$10,000 in cash and \$88 in check.
9 Q All right. Now, can you tell us, by referring to the
10 attached envelope, what the \$10,000 represented?
11 A Cash to be credited to Mr. Dixon's Account 2510.
12 Q All right, and referring to Government's Exhibit 66,
13 which is a cash received journal, that is for the
14 Marine Bank, is it not?
15 A Yes, sir.
16 Q And that reflects a credit to Mr. Dixon's account?
17 A Yes, sir.
18 Q And that appears over here by entry of May 24th, does
19 it not, as a credit?
20 A Yes, sir.
21 Q And can you tell us, please, Mr. Lewis, why Mr. Dixon
22 took an \$8,000 cash advance on May 24, 1971 and that
23 same day deposited it or repaid \$10,000 cash?
24 MR. FAHRINGER: I object to that, if it please
25 your Honor.

1 BY MR. STEWART:

2 Q If you know.

3 MR. FAHRINGER: It calls for a conclusion.

4 THE COURT: Yes.

5 MR. FAHRINGER: I am sorry, your Honor. I didn't
6 mean to interrupt you. I think that
7 calls for a conclusion.

8 THE COURT: Yes. I will sustain the objection.

9

10 BY MR. STEWART:

11 Q All right, sir. Now, there are two other items which
12 I do not believe were previously identified,
13 Government's Exhibit 32, can you tell us what that
14 is, please?

15 A This is a general ledger account 2510 for Mr. L. A.
16 Dixon, Sr., for the year 1970.

17 Q All right, sir, and what is the outstanding balance, -
18 that is the debit as of January 1, 1970?

19 A \$10,000.

20 Q All right, and are there any further debits during the
21 year?

22 A No, sir, except on December 31st.

23 Q All right, and that is the \$9,000 you previously
24 referred to?

25 A Yes.

- 1 Q All right, and Government's Exhibit 49, sir, can you
2 tell us what that is?
- 3 A That is Mr. Dixon, Sr.'s advance account 2510 for
4 the year 1971.
- 5 Q All right. That goes down just to March 31st of '71,
6 is that correct?
- 7 A Yes.
- 8 Q And the \$19,000 is carried over there?
- 9 A Yes, sir.
- 10 Q All right, sir. I show you what has been premarked
11 as Government Exhibit 70. Can you identify this?
- 12 A It is a Form 10-K filing for the SEC.
- 13 Q And can you tell us the date that it was transmitted?
- 14 A It was received by the SEC on March 31st.
- 15 Q What year, please?
- 16 A 1971.
- 17 Q All right, sir, and I believe you signed this, did you
18 not?
- 19 A Yes, sir.
- 20 Q Now, sir, I direct your attention to Government Exhibit
21 71. Can you tell us what that document is, please?
- 22 A It is a proxy statement mailed to all stockholders
23 prior to the annual meeting to be held April 20, 1971.
- 24 Q Keep your voice up, if you will.
- 25 A Shall I repeat it?

1 Q No. I think they got it. Now, does that, - does this
2 proxy statement anywhere reflect any of the activity
3 reflected in Mr. Dixon's 2510 and 2512 accounts during
4 the year 1970?

5 A No, sir.

6 Q Did you, - who was it that prepared this proxy statement?

7 A It was prepared in combination primarily with Mr.
8 Entwisle, our legal counsel.

9 Q All right, and who else beside Mr. Entwisle?

10 A Actually, Mr.,- In preparing the proxy statement,
11 Mr. Entwisle initiated it and requested information
12 from various people in the corporation. We drew the
13 information together, summarized it in the proxy state-
14 ment and drafted the proxy statement.

15 Q All right, sir.

16 A All the information, - I can't say where all the
17 information came from, but a good bit of it came from
18 me.

19 Q All right. Can you tell us what, if any, role Mr.
20 Dixon played, Dixon, Jr., that is, played in either
21 providing information for the proxy statement or in
22 reviewing drafts of the proxy statement?

23 A I believe he would have received a draft of the proxy
24 statement from Mr. Entwisle, yes, sir.

25 Q All right, sir. Are you familiar with Mr. Dixon's

1 handwriting?

2 A I think so.

3 Q I show you a portion of what has been premarked as
4 Government's Exhibit 77. Referring now to the second
5 page of this file and in the middle of that page, there
6 is some writing right there. Can you tell us whose
7 writing that is?

8 A Mr. Dixon, Jr.

9 Q All right, sir. That is the writing in ink, is that
10 correct?

11 A Yes, sir.

12 Q And referring now to the third page of that particular, -
13 I am sorry, - the sixth page of that particular docu-
14 ment at the top of the page the writing in ink, can you
15 tell us whose writing that is?

16 A Mr. Dixon, Jr.'s.

17 Q All right, sir, and if we can go back now to Page 2 of
18 this document, can you tell us what that document is,
19 on examination of Page 2?

20 A It is a draft of the proxy statement.

21 Q And is that the proxy statement, the first draft of
22 the proxy statement which is Government Exhibit 71?

23 A It is a draft of it, first, - I don't know whether it
24 is first or second. There could have been more drafts,
25 but it is a draft of it, ultimately ended up as the

1 proxy statement.

2 Q Government's Exhibit 71 is the final proxy.

3 MR. FAHRINGER: May we approach the bench a
4 minute, please?

5 THE COURT: Mr. Knisley, come over, please.

6
7 (Sidebar conference held between
8 the Court and Mr. Stewart and Mr.
9 Fahringer as follows:

10 MR. FAHRINGER: I only meant to ask this, I have
11 a little bit of an emergency which
12 might need a phone call. That is what
13 the note was about.

14 THE COURT: I thought we were getting to the
15 end.

16 MR. STEWART: I have almost done it within my
17 time limit, Judge.

18 THE COURT: You are twenty minutes over.

19 MR. FAHRINGER: It is not that urgent. If you
20 are going to finish in ten minutes,
21 I would rather wait.

22 MR. STEWART: Finish the whole direct?

23 MR. FAHRINGER: Yes.

24 MR. STEWART: I am close to the end of the
25 direct.

1 THE COURT: Why not finish the direct.

2
3 (Sidebar conference concluded.)
4

5 BY MR. STEWART:

6 Q All right, sir. Now, when the item which is Government
7 Exhibit 71 was completed, - that is the notice of
8 annual meeting of stockholders, what was done with
9 that item, with the final draft?

10 A The final draft was printed in Pittsburgh, Pennsylvania.
11 The finished copies along with the other forms such as
12 the proxy card and the return envelopes and what have
13 you were delivered to the Mellon Bank for mailing to
14 all stockholders of record.

15 Q All right, sir. Now, did each mailing to the stock-
16 holder of record contain this notice which is the so-
17 called proxy statement?

18 A Yes, sir. I think we have an affidavit from Mellon
19 Bank that they have mailed this information according
20 to the stockholders list.

21 Q And that is in the regular course of business?

22 A Yes, sir, that is in the regular course of business.

23 Q Now, I show you Government's Exhibit 72, 73, 74 and
24 75. Can you tell us, please, what those are, sir?

25 A These are proxy cards that were returned from the

William Lewis for Government, Direct.

1 stockholders for the annual meeting to be held in 1971.

2 Q All right, sir. Now, you say that they are returned
3 from the stockholders. How can you tell that from
4 examining the exhibits? Well, perhaps I should strike
5 that and ask you can you tell us whether those are
6 executed or not?

7 A Yes, sir, they are executed.

8 Q All right, and how can you tell us that.

9 A By signature.

10 Q All right, which corresponds to the name of the
11 stockholder, is that right?

12 A Yes, sir.

13 Q So we understand this, the date of execution would
14 appear in ink at the top left-hand corner, would it
15 not?

16 A Yes, sir.

17 Q And the signature of the stockholder would appear at
18 the top right-hand corner?

19 A Where signature was requested to be made, yes.

20 Q All right, and the number of shares which the stock-
21 holder has, does that appear right in the center at
22 the top?

23 A Yes, sir.

24 Q So that for Government's Exhibit 73, it would appear
25 that Mr. Maul has 3,460 shares and 300 shares, is that

1 right?

2 A As reflected by these cards, yes, sir.

3 Q All right, sir. Now, when executed proxies were, -
4 Strive that. Each proxy that went out, did it contain
5 a self-addressed envelope to AVIM Corporation?

6 A Yes, sir.

7 Q All right, and when those envelopes came back, did
8 they come back to Pittsburgh or to Jamestown?

9 A Jamestown.

10 Q And I take it that they came to the main post office
11 at Jamestown?

12 A Yes, sir.

13 Q All right. What was done by way of picking up those
14 proxies after they returned to Jamestown?

15 A They were delivered to our building by an outside mail
16 service that we contract with. They were brought to
17 the building. They were opened up. They were reviewed
18 for validity of the proxy. They were then tabulated.

19 Q All right, sir, and who was immediately responsible
20 for overseeing the process of picking those items up
21 from the post office, bringing them in to the corpora-
22 tion and causing the tabulation?

23 A I was.

24 Q All right, sir, and who was it that directed you to
25 do that particular function?

1 A It was part of my duties.

2 Q Did anyone specifically direct you to do that at some
3 time or another?

4 A I think in the handling of them coming back, I think
5 perhaps Mr. Dixon or Mr. Entwisle, we all had agreed
6 this would be the way that they would be handled.

7 Q Now, by the way, from an examination of these particu-
8 lar proxies, - that is, Government's Exhibits 72 through
9 75, can you tell us, please, sir, whether or not these
10 are all for the April, 1971 meeting, the meeting to
11 which that proxy statement Government Exhibit 71 relates?

12 A Yes, sir, April 20, 1971.

13 Q For all of them?

14 A Yes.

15 Q All right. Now, Mr. Lewis, I show you an item which
16 consists of a folder and it is premarked Government
17 Exhibit 80 containing a number of documents which are
18 individually not marked, but which have been held
19 together collectively by a rubber band. Can you tell
20 us, collectively, what this file is?

21 A These are expense accounts submitted by Mr. Dixon, Jr.

22 Q All right, sir. For what type of expenses?

23 A Travel.

24 Q All right, and what is the, - you say they are expense.

25 A Reports.

Q Reports, and after the report was submitted by Mr.

1 Dixon showing his expenses in travel, can you tell us
2 what the yellow slip here on each one of these reflects?

3 A This particular one is payment of a director's fee.

4 Q Well, I don't mean specifically. I just want to know
5 what happened after the slip, his expense slip came
6 in to the corporation, what was done?

7 A It was processed for payment.

8 Q All right.

9 A And the check was issued to him.

10 Q And do each one of these yellow slips reflect issuance
11 of a check?

12 A Yes.

13 Q To Mr. Dixon for travel and other business expenses?

14 A Yes, sir.

15 Q That is for the year 1970, is it not?

16 A Yes, sir.

17 Q So he was being reimbursed then for travel?

18 MR. FAHRINGER: I object to that, your Honor,
19 leading.

20 THE COURT: Can you rephrase the question,
21 please?

22 MR. STEWART: No. I think I will just withdraw
23 it, your Honor.

24 THE COURT: All right.

25

1 BY MR. STEWART:

2 Q Can you tell us, please, if during the year 1970 any
3 portion of these advances on the 2510 account represent
4 travel?

5 A I don't know.

6 Q All right. The - -

7 A I might say this, that Mr. Dixon, in submitting his
8 expense accounts, was paid in cash. They were not
9 charged against his account. He requested that he be
10 paid in cash. Repayments or advances could have been
11 a result of these payments here.

12 Q All right, so that - -

13 A I do not know.

14 Q So, from your knowledge as director of finance during
15 1970 then all travel was paid by reimbursement?

16 A The travel on these expense accounts, yes, sir.

17 Q Referring to Government's Exhibit 80?

18 A Yes, sir.

19 Q Let me ask you one other thing, if a business expense
20 had been vouchered against this account, it would be
21 reflected in these documents, would it not? We have
22 every document for these entries, don't we?

23 A I don't quite understand the question.

24 Q Well, you have been through each document which is
25 referenced here on the general ledger sheet in the last

William Lewis for Government, Direct.

1 hour and a half?

2 A. Yes.

3 Q. And the, - if there were a travel voucher, it would
4 be reflected in these accompanying documents that are
5 referenced right here, would it not?

6 A. The payment of the check against the expense account
7 is not reflected here. In other words, the expense
8 account is not processed without issuing a check and
9 charged back or credited to the account.

10 Q. All right, sir. Last item, Government Exhibit 81, can
11 you tell us what this is?

12 A. I almost forgot about it. It is a PLI Program,
13 Practicing Law Institute. It is a loose f binder
14 covering a seminar held in the Statler Hilton Hotel in
15 New York City on Friday and Saturday, March 18th and
16 19th of 1966.

17 Q. Sir, who attended that seminar?

18 A. Mr. Entwisle, Mr. Dixon and myself.

19 Q. All right, sir, and where did you keep this particular
20 blue binder?

21 A. I found it in my office, in my desk.

22 Q. During 1970?

23 A. In my desk.

24 Q. All right, sir. This is the SEC regulations, isn't
25 it?

William Lewis for Government, Direct.

1 MR. FAHRINGER: I am going to object, if it please
2 your Honor.
3 THE COURT: I will sustain the objection.
4
5 BY MR. STEWART:
6 Q Can you tell us what it is?
7 A It is a form - -
8 MR. FAHRINGER: Your Honor - -
9 THE COURT: Mr. Stewart, I don't know. This
10 is some kind of a practicing law
11 institute binder?
12 MR. STEWART: Yes, sir.
13 THE COURT: I will sustain the objection. I
14 do not think this man should be quali-
15 fied or that should be, whatever
16 statements are in there or anything is
17 not the law in this case. Maybe you
18 can explain to us later what the purpose
19 of this is.
20 MR. STEWART: I will withdraw it and wait for a
21 more appropriate time. Your Honor, I
22 wonder if I may have a few minutes to
23 go over the large number of exhibits.
24 THE COURT: We will be in recess for about
25 fifteen minutes and then return.

William Lewis for Government, Direct.

(Recess taken at 4:00 p.m.)

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William Lewis for Government, Cross.

1 PROCEEDINGS: December 4, 1974, 4:10 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury present.)

5

6

7 W I L L I A M L E W I S, a witness called by and in behalf
8 of the Government, having been previously duly sworn, resumed
9 the witness stand and testified further as follows:

10

11 DIRECT EXAMINATION BY MR. STEWART (Resumed):

12 Q. Mr. Lewis, can you tell us how much, if any, interest
13 was paid on the \$67,000 during 1970 by Mr. Dixon?

14 MR. FAHRINGER: That is objected to if it please
15 your Honor.

16 THE COURT: I will sustain the objection.

17 MR. STEWART: I have no further questions.

18

19 CROSS EXAMINATION BY MR. FAHRINGER:

20 Q. If it please your Honor. Mr. Lewis, let me ask you
21 about this expense account. If I understand it
22 correctly, it was the policy at AVM that men who had
23 cause to expend moneys for business or travel were
24 able to get an advance, is that correct?

25 A. Yes.

William Lewis for Government, Cross.

1 Q. All right, so that if I understand your testimony
2 correctly, if I were going to take a trip to California,
3 I would come in and if I needed, say, a thousand dollars
4 or \$500 in advance, why, the company would issue me
5 a check?

6 A. Yes, sir.

7 Q. All right. Now, when I returned I would then make up
8 an expense sheet accounting for how I spent or what
9 moneys I spent while on business, is that correct?

10 A. Yes, sir.

11 Q. Now, isn't it true that there were two systems that
12 were customarily employed at AVM; one would be that I
13 could make up a voucher explaining how I expended this
14 money and reduce my advance?

15 A. Yes, sir.

16 Q. The other way is sometimes if expense accounts were
17 quite extensive a man might put in an expense account
18 and the company would issue him another check repaying
19 his expenses?

20 A. Yes, sir.

21 Q. All right. Now, in that situation do you know from
22 your experience at AVM that occasionally that person
23 would then take that expense account, cash it and pay
24 down his advance account?

25 A. It's possible, yes.

William Lewis for Government, Cross.

- 1 Q. Well, do you know that it happened on occasion?
- 2 A. Yes, sir.
- 3 Q. All right. Now, you were asked about an item. Do you
- 4 remember being asked about \$6,500 where a check was
- 5 issued to Mr. Dixon and then it was paid back into the
- 6 business or paid back to AVM?
- 7 A. Yes, sir.
- 8 Q. All right, and do you remember being asked by Mr. Stewart
- 9 do you know how to account for the \$6,500 going out
- 10 and then going right back? Do you remember him asking
- 11 you that question?
- 12 A. Yes.
- 13 Q. Let me ask you this, if you recall from your experience
- 14 with Mr. Dixon, were there occasions when Mr. Dixon
- 15 had to travel to Europe?
- 16 A. Yes, sir.
- 17 Q. Was AVM opening up or trying at least to open up markets
- 18 over there for voting machines?
- 19 A. Yes, sir.
- 20 Q. All right, and do you know of an occasion when he had
- 21 a check drawn to him for a trip that was scheduled to
- 22 Europe and the trip was subsequently cashed so he
- 23 returned the money to the company?
- 24 A. I don't recall that.
- 25 Q. You don't remember that episode?

William Lewis for Government, Cross.

- 1 THE COURT: Mr. Fahringer, I think you said,
2 unless I misunderstood, "the trip was
3 cashed".
- 4 MR. WAHRINGER: I am sorry. I meant the trip was
5 canceled.
- 6 THE COURT: Canceled.
- 7 BY MR. FAHRINGER:
- 8 Q. I beg your pardon, your Honor. Thank you. The trip was
9 canceled and the check was then of course returned back
10 to the company?
- 11 A. I don't recall that particular incident, no, sir.
- 12 Q. Okay. Now, Mr. Lewis, you have mentioned you have known
13 Mr. Dixon for sometime?
- 14 A. Yes, sir.
- 15 Q. And you know he is married?
- 16 A. Yes, sir.
- 17 Q. And you know he has two sons?
- 18 A. Yes, sir.
- 19 Q. All right, and your position with the company during
20 these years you indicated was secretary-treasurer?
- 21 A. Yes, sir.
- 22 Q. In other words, so we all understand that, in the AVM
23 operation those two offices were combined into one and
24 you occupied both offices?
- 25 A. Yes, sir.

William Lewis for Government, Cross.

- 1 Q. All right. Now, as secretary-treasurer you were the
2 chief financial officer of the corporation, weren't you?
- 3 A. In the beginning.
- 4 Q. All right, and didn't you have under you a staff of
5 about, oh, five people or so?
- 6 A. Actually, the accounting in each division and so forth
7 had a head and they in effect were responsible to the
8 home office.
- 9 Q. Okay. What I meant is AVM there in Jamestown, did you
10 have a staff of about five people that worked under
11 you?
- 12 A. Yes, sir.
- 13 Q. All right. Now, do you recall testifying before the
14 grand jury in this case?
- 15 A. Yes, sir.
- 16 Q. And do you recall being asked before the grand jury what
17 your duties were?
- 18 A. Yes, sir.
- 19 Q. And do you remember stating before the grand jury
20 "and all those duties that relate to stockholder
21 relationship"?
- 22 A. Yes.
- 23 Q. All right. Now, isn't it true that the AVM Company had
24 a policy that officers could obtain advance loans from
25 the company?

William Lewis for Government, Cross.

- 1 A. Yes, sir.
- 2 Q. They used to borrow money from the company?
- 3 A. Yes, sir.
- 4 Q. As a matter of fact, were there other officers or
5 employees who borrowed funds from the company?
- 6 A. Yes.
- 7 Q. Do you recall a man by the name of Doolittle?
- 8 A. Yes, sir.
- 9 Q. Was he the sales manager?
- 10 A. Vice-president in charge of sales.
- 11 Q. Vice-president in charge of sales.
- 12 A. Of voting machines.
- 13 Q. I am sorry.
- 14 A. He was vice-president of AVM Corporation in charge of --
- 15 Q. Did he have occasion to borrow moneys from the company?
- 16 A. Yes, sir.
- 17 Q. And was that carried on an advance account, this
18 2510 account?
- 19 A. Yes, sir.
- 20 Q. All right. Incidentally, let me ask this question; if
21 a man, for instance, was going to move and he needed
22 funds to, let's assume for a moment the company was
23 going to transfer him someplace else and in order to
24 either have funds to move his family and belongings or
25 to arrange for the purchase of a new home, would the

William Lewis for Government, Cross.

1 company advance him as much as \$5,000 or \$7,500 to
2 meet those needs?

3 A. With approval, yes.

4 Q. With approval, all right. Now, incidentally, in a
5 situation of that kind who would you go to for approval?

6 A. Mr. Dixon.

7 Q. Lloyd Dixon, all right. Now, all of these transactions
8 that Mr. Stewart has just gone through with you, and
9 I am not going to recap them, but you have identified
10 a lot of documents there and a lot of transactions
11 covering this period of time that he has discussed
12 with you, isn't that so?

13 A. Yes.

14 Q. Were all these transactions openly reported on the
15 books?

16 A. Yes.

17 Q. Now, this 2510 account, that was the so-called advance
18 account, is that correct?

19 A. Yes, sir.

20 Q. All right. Now, isn't it also true that a man could
21 have advances for travel but he could also have advances
22 for personal needs?

23 A. Yes, sir.

24 Q. All right. The example I gave you, for instance, of
25 an employee who wanted or needed \$5,000 for a move,

William Lewis for Government, Cross.

- 1 that would go into that 2510 account, wouldn't it?
- 2 A. Yes.
- 3 Q. Also if that same employee went in to get, say, \$1,500
- 4 for travel expenses, that would go into that account,
- 5 wouldn't it?
- 6 A. Yes, sir.
- 7 Q. Now, when those two items went into that account, they
- 8 would not be designated on the computer sheet one for
- 9 travel and one for loan, would they?
- 10 A. No, sir.
- 11 Q. So that when you saw the two items there you would have
- 12 \$1,500 and you would have \$5,000, wouldn't you?
- 13 A. Yes.
- 14 Q. All right, even though they were both for different
- 15 purposes they would be carried on the same account?
- 16 A. Yes, sir.
- 17 Q. All right. Now, during these times you have testified
- 18 here today concerning those transactions I ask you this
- 19 question, Mr. Lewis, did Mr. Dixon ever say anything
- 20 to you or do anything that indicated to you that these
- 21 transactions were to be concealed in any way?
- 22 A. No, sir.
- 23 Q. All right. As a matter of fact --
- 24 A. They were booked all through the ledgers.
- 25 Q. All the way from beginning to end, isn't that right?

William Lewis for Government, Cross.

1 A. Yes.

2 Q. There are vouchers to cover them, right?

3 A. Yes.

4 Q. And checks to cover them?

5 A. Yes, sir.

6 Q. And they are covered on the various journals?

7 A. Yes, sir.

8 Q. Now, in addition to that, Mr. Stewart alluded to these
9 confirmation slips. I want to ask you a little bit
10 more about that. You had as your auditors the firm of
11 Ernst & Ernst, didn't you?

12 A. Yes.

13 Q. And of course, you being the secretary-treasurer, I
14 take it you worked with those men from time to time,
15 didn't you?

16 A. Yes.

17 Q. And they had the responsibility of coming in there
18 and auditing the books, isn't that true?

19 A. Yes.

20 Q. One of the reasons they would audit the books is that
21 financial statements had to be prepared, correct?

22 A. Yes.

23 Q. And 10-K's had to be prepared, correct?

24 A. Yes.

25 Q. Now, and proxy statements had to be prepared, correct?

William Lewis for Government, Cross.

1 A. Yes.

2 Q. Now, they would do all the financial work on the 10-K,
3 wouldn't they?

4 A. Not in all cases. In many cases it was a combination,
5 some of our people worked on it in combination with the
6 E&E, yes.

7 Q. I am sorry. The E&E people were coming in and you had
8 an accounting department, didn't you?

9 A. Yes, sir.

10 Q. And they would work with them together getting your
11 various figures, your various transactions compiled,
12 right?

13 A. Yes.

14 Q. All right. Now, one of the procedures that they
15 initiated was as far as loans were concerned or advances,
16 they wanted to verify those at the end of every year,
17 didn't they?

18 A. Yes.

19 Q. So what they would do is, E&E would prepare what is
20 called a confirmation slip?

21 A. Yes, sir.

22 Q. This would be a slip that would show how much Bill Lewis
23 owed to the company, how much Lloyd Dixon owed to the
24 company or Doolittle owed to the company or any other
25 officer, correct?

William Lewis for Government, Cross.

1 A. Yes.

2 Q. That slip would then be given to the employee and he
3 had to sign on that "Yes, this is the correct amount",
4 right?

5 A. Yes.

6 Q. Isn't it true that when Mr. Dixon would get that slip
7 he would very often bring it to either you or someone
8 in the accounting department and ask them "Will you
9 please verify this for me"?

10 A. Yes.

11 Q. All right. Now, did Lloyd Dixon in his role as the, -
12 well, first of all, let me ask you this; can you tell
13 us, Mr. Lewis, whether Mr. Dixon was concerned
14 particularly in the year 1970 with a number of acquisitions
15 that were in process?

16 A. Well, for years, many years from the start in 1964 we
17 were interested in acquisitions.

18 Q. And by acquisitions do we, when we use that term, do
19 you mean acquire other companies or firms that would
20 come within the AVM operations?

21 A. Yes, sir.

22 Q. All right. Did he travel an awful lot?

23 A. Considerably.

24 Q. Would there be times when he would be away for a whole
25 week?

William Lewis for Government, Cross.

- 1 A. Yes, sir.
- 2 Q. Would there be times when he was away for a whole month
3 or the better part of the month?
- 4 A. At times he was away for extended periods of time.
- 5 Q. All right. Now, did you have plants in Florida? I am
6 talking about AVM.
- 7 A. Yes. We had acquired a plant in Florida in West Palm
8 Beach.
- 9 Q. Did you have a plant in Georgia, Albany, Georgia?
- 10 A. No, sir.
- 11 Q. I beg your pardon?
- 12 A. No, sir.
- 13 Q. I am sorry. Was there one in South Carolina?
- 14 A. Yes.
- 15 Q. In Marion, South Carolina?
- 16 A. Yes.
- 17 Q. Was there one in Stanley and Norwood, North Carolina?
- 18 A. Yes, sir.
- 19 Q. All right, and also were your general counsel's offices
20 in Pittsburgh, Pennsylvania?
- 21 A. Yes.
- 22 Q. And he would be from time to time with some degree of
23 regularity travel to all of these places?
- 24 A. Yes, sir.
- 25 Q. Now, did you know Lloyd Dixon's father, Mr. Dixon, Sr.?

William Lewis for Government, Cross.

- 1 A. Yes, sir.
- 2 Q. And the time in 1970 was he chairman of the Board?
- 3 A. Yes, sir.
- 4 Q. Do you know whether he resided in Florida?
- 5 A. He did, yes, sir.
- 6 Q. At least part of the time?
- 7 A. Yes, at one time.
- 8 Q. From your observation between Mr. Dixon and his son
- 9 Lloyd Dixon, Jr. who is in this court, courtroom, were
- 10 they rather close?
- 11 A. I would say yes, very definitely.
- 12 Q. Now, I want to ask you whether you recall Mr. Dixon, Sr.
- 13 used to get advances from the company, didn't he?
- 14 A. On occasions, yes, sir.
- 15 Q. Now, he was, so we are clear, he was chairman of the
- 16 Board of AVM, right?
- 17 A. Yes, sir.
- 18 Q. Mr. Dixon, Jr. was the president?
- 19 A. Yes.
- 20 Q. All right. Now, do you recall an occasion when Mr.
- 21 Dixon, Jr. came to you and said that he was getting an
- 22 advance for his father?
- 23 A. I don't recollect that particular incident, no, sir.
- 24 Q. Do you know that it happened from time to time?
- 25 A. It could happen but I don't recall it.

William Lewis for Government, Cross.

1 Q. All right. Now, on this \$9,000 I believe you testified
2 from direct examination by Mr. Stewart that there came
3 a time at the end of 1970 when Mr. Dixon came to you
4 and indicated that there had been a mistake, that he
5 had been charged with \$9,000 that went to Mr. Dixon, Sr.,
6 is that correct?

7 A. He asked me to transfer it because they should have been
8 charged to his father.

9 Q. He indicated it should have been on his dad's account
10 because there was an error, didn't he? Did he indicate
11 to you at all that it shouldn't have been charged to
12 him, Mr. Lewis?

13 A. Yes. He said it should have been charged to his father
14 and not to him.

15 Q. Okay, and then you effectuated that transfer, right?

16 A. Yes, sir.

17 Q. Now, Mr. Lewis, do you recall a man by the name of
18 Sam Hale?

19 A. Yes, sir.

20 Q. Was he an employee of E&E?

21 A. Yes, sir.

22 Q. Was he at that time one of their managers? Am I using
23 the term incorrectly?

24 A. I really don't know what you would call his title but
25 he was associated with the Ernst & Ernst Buffalo office

William Lewis for Government, Cross.

- 1 and handled our account.
- 2 Q. Was he in charge of your account?
- 3 A. Yes, he was our accountant.
- 4 Q. And do you remember back in 1967 the subject coming up
- 5 that Mr. Dixon's account, - that is to say his loan
- 6 account had exceeded \$20,000, or at least was in question?
- 7 A. There was some, - I recall something about that, yes,
- 8 sir.
- 9 Q. All right, and do you recall Mr. Hale indicating that
- 10 it had to be reduced down by the end of the year?
- 11 A. Yes.
- 12 Q. All right. Now, after that do you recall that the
- 13 account was reduced down?
- 14 A. It was, yes, sir.
- 15 Q. All right. Now, did Ernst & Ernst from time to time
- 16 give advice concerning accounting procedures and
- 17 compliance with various sections of the law, the tax
- 18 law, the SEC law and whatever; did you get advice
- 19 from them from time to time?
- 20 A. Periodically.
- 21 Q. Periodically. Did you consult with them from time to
- 22 time?
- 23 A. As they were making their audits, yes.
- 24 Q. All right. Now, as a result of these conversations
- 25 with Mr. Hale, were you left with the impression that

William Lewis for Government, Cross.

1 the account had to be reduced down under \$20,000 at the
2 end of each year?

3 A. I believe that is where I got my impression, yes.

4 Q. All right, to comply with the SEC provisions?

5 A. Yes.

6 Q. Now, was it after that that every year this procedure
7 was followed of reducing at the end of the year a check
8 would be made of Mr. Dixon's account and if it exceeded
9 \$20,000, it was reduced down by year end?

10 A. I believe so, yes, every year.

11 Q. All right. Now I want to ask you about this \$5,000 that
12 you secured as an advance from AVM and then you in turn
13 loaned it to Mr. Dixon so that the account could be
14 reduced under \$20,000. You indicated when Mr. Stewart
15 asked you on direct examination when he said "Where was
16 Mr. Dixon when this occurred?", you said you believed
17 he was in Florida.

18 A. Right, that's what I said.

19 Q. Is that your best recollection?

20 A. Yes.

21 Q. All right. Now, do you recall at all, Mr. Lewis, when
22 you discovered that the account was still over \$20,000,
23 do you recall placing a call to Mr. Dixon?

24 A. I don't recall placing a call but I am not sure whether
25 in some conversation the fact that the account was not

William Lewis for Government, Cross.

- 1 under twenty, there was a phone call.
- 2 Q. Okay.
- 3 A. Whether I initiated it or he called in, I do not recall.
- 4 Q. All right, but in any event, sometime prior to that,
- 5 isn't this so, Mr. Lewis, that sometime prior to that
- 6 Mr. Dixon had made arrangements to get his account
- 7 under \$20,000?
- 8 A. Yes.
- 9 Q. All right, and then if you are correct in your recollec-
- 10 tion that he had gone to Florida it came to the attention
- 11 of someone that the account was still over \$20,000, is
- 12 that right?
- 13 A. Yes.
- 14 Q. All right, and that is when there was a telephone
- 15 conversation between you and he?
- 16 A. Yes.
- 17 Q. Now, Mr. Lewis, did you follow the normal procedure of
- 18 getting an advance from AVM in your name?
- 19 A. Yes, sir.
- 20 Q. All right, and when you borrowed that money of \$5,000,
- 21 were you obligated to pay that back to AVM?
- 22 A. Yes.
- 23 Q. Now, concerning the 10-K's, were you involved in the
- 24 preparation of the 10-K?
- 25 A. Somewhat.

William Lewis for Government, Cross.

1 Q. All right. Did you work with the E&E people concerning
2 that?

3 A. Not primarily with them, no, sir.

4 Q. Did they work on the 10-K?

5 A. Yes, but with some other people in our organization.

6 Q. And was one of those persons Jack Lyons?

7 A. Yes.

8 Q. What is his title?

9 A. Executive vice-president of finance.

10 Q. He is executive vice-president of finance. Would he
11 be the next man under you then?

12 A. No, sir.

13 Q. Who would be the next man under you in terms of
14 authority?

15 A. He and I, - in other words, we were both responsible to
16 Mr. Dixon.

17 Q. I know that, but what I meant is you were secretary-
18 treasurer of the company, is that right?

19 A. Yes.

20 Q. All right. Was Mr. Lyons as vice-president in charge
21 of finance, did he in any way come under your authority?

22 A. No.

23 Q. He didn't, okay, all right.

24 A. Only as you would in general business practice, discussion
25 or something.

William Lewis for Government, Cross.

- 1 Q. I see, all right. Now, in terms of the Proxy Statement
2 was Mr. Entwisle in charge of preparing the Proxy
3 Statement?
4 A. More or less so, yes, sir.
5 Q. All right. Well, Mr. Entwisle is a lawyer, isn't he?
6 A. Yes, sir.
7 Q. His offices were in Pittsburgh?
8 A. Yes.
9 Q. And did you indicate that he would contact you on most
10 occasions, and I take it that he would inquire of you
11 for certain information?
12 A. Yes, sir.
13 Q. All right. He would ask you about certain transactions,
14 right?
15 A. Yes.
16 Q. And you would supply him with the information that he
17 requested?
18 A. Yes.
19 Q. All right, and then there would be a draft prepared of
20 the Proxy Statement, isn't that so?
21 A. Yes.
22 Q. Isn't it true that that Proxy Statement, at least one
23 draft of it, was sent to you?
24 A. Yes.
25 Q. All right, and that would come under a letter from

William Lewis for Government, Cross.

1 Mr. Entwisle "Please review, examine this and call me
2 and give me your comments"?

3 A. Yes.

4 Q. And then you would talk with him, wouldn't you?

5 A. Yes.

6 Q. And I take it from time to time you would discuss
7 various phases of the Proxy Statement between you and
8 he over the telephone?

9 A. Yes.

10 Q. And I take it there were times when Mr. Entwisle would
11 come up to Jamestown and actually meet with you?

12 A. Yes.

13 Q. All right. Incidentally, Mr. Entwisle was also a
14 director of the company?

15 A. Director and assistant secretary.

16 Q. Director and assistant secretary, and do you recall
17 being asked before the grand jury, "Q. : Upon whose
18 authorization are the Proxy Statements drawn up and
19 issued", and do you remember giving this answer, "Proxy
20 Statements are gathered together by Mr. Entwisle who is
21 our assistant secretary and legal counsel and after the
22 information is gathered by him, we have it reviewed and
23 printed and mailed from the Mellon Bank"?

24 A. Yes, sir.

25 Q. All right. One thing, Mr. Lewis, one of the things

William Lewis for Government, Cross.

- 1 that Mr. Entwisle would inquire about is the remunera-
2 tion of the officers, wouldn't he?
- 3 A. Yes, sir.
- 4 Q. He would ask you whether there were any transactions
5 between the officers and the company, isn't that so?
- 6 A. Just remuneration.
- 7 Q. All right.
- 8 A. We had to prepare a schedule which is in the Proxy
9 Statement.
- 10 Q. But isn't it true also he would ask you sometimes about
11 transactions between officers and --
- 12 A. I don't recall that particularly.
- 13 Q. You are not saying he didn't?
- 14 A. No, sir.
- 15 Q. All right. Now, Mr. Lewis, do you know in terms of
16 the AVM Corporation and I guess any corporation, it is
17 the Board of Directors who are the governing body of
18 the corporation?
- 19 A. Yes, sir.
- 20 Q. As a matter of fact, the Board of Directors are the
21 ones who either elect or appoint the president and the
22 secretary-treasurer, isn't that so?
- 23 A. Yes.
- 24 Q. Now, you are a shareholder in AVM, aren't you?
- 25 A. Yes, sir.

William Lewis for Government, Cross.

1 Q. And I believe it has been established that you signed
2 the 10-K, right?

3 A. Yes.

4 Q. You also signed the Proxy Statement?

5 A. Yes.

6 Q. And isn't it true when all the Proxy Statements came in
7 you were the one who in effect voted the Proxy?

8 A. Yes.

9 Q. All right, and you also signed the original registration
10 with the SEC, didn't you?

11 A. Yes.

12 Q. Now, it is true, is it not, that you have been given
13 immunity in these proceedings?

14 A. Yes.

15 Q. And you have been advised by Judge Curtin that nothing
16 you say here can in any way be used against you in any
17 future criminal proceedings, isn't that true?

18 A. Yes.

19 Q. And let me ask you this question; did you ever at any
20 time encompassed in the course of these proceedings,
21 this indictment, did you ever at anytime conspire with
22 Mr. Dixon or anyone else to use the mails to violate
23 the SEC provisions?

24 A. No, sir.

25 MR. STEWART: Your Honor, I object to that

William Lewis for Government, Cross.

1 question. I think it reaches the ultimate
2 conclusion.

3 THE COURT: Yes. I will sustain the objection.
4 The jury has to answer that question
5 from all the facts in the case.

6 MR. FAHRINGER: May I have a moment, your Honor?

7 THE COURT: I think, - go ahead, Mr. Fahringer.
8 I just want to say a word to the jury.
9 Ladies and gentlemen, when Mr. Lewis
10 said that he understands he could not be
11 prosecuted, you also understand, of course,
12 Mr. Lewis, that if you misstate willfully
13 your testimony that there is always a
14 possibility that you could be prosecuted
15 for making a false statement or perjury;
16 you do understand that?

17 THE WITNESS: Yes, sir.

18 MR. FAHRINGER: I have no further questions, your
19 Honor.

20 THE COURT: Mr. Stewart, anything further of
21 the witness?

22 MR. STEWART: May I have just a moment, your
23 Honor?

24 THE COURT: Yes.
25

William Lewis for Government, Redirect.

1 REDIRECT EXAMINATION BY MR. STEWART:

2 Q. Mr. Lewis, you indicated that an official in the
3 company could obtain a travel advance or an advance
4 for a legitimate business expense; that was permissible,
5 was it not?

6 A. Yes.

7 Q. And you had also indicated in answer to Mr. Fahringer's
8 question that on occasion instead of taking the cash
9 reimbursement, he could simply have his expense
10 credited to the advance account, is that right?

11 A. Yes.

12 Q. Now, with respect to the 2510 account and the 2512
13 account of Mr. Dixon, Jr. during the years 1966 through
14 1969, were there in fact instances in which travel
15 expenses and legitimate business expenses were, as you
16 were, vouchered into that particular account as an
17 offset?

18 A. I believe so, yes, sir.

19 Q. All right, sir. Now --

20 A. I would --

21 Q. Go ahead.

22 A. It could have been done. I would like to see the
23 records to make sure. In other words --

24 Q. All right.

25 A. What I am saying, it could have happened and that

William Lewis for Government, Redirect.

1 probably did happen.

2 Q. During '66 to '69?

3 A. Yes.

4 Q. All right, sir. Now, with respect to the 1970 year,
5 however, was there any change with respect to your
6 answer?

7 A. None of those were credited back, processed and credited
8 back in that manner to the 2510.

9 Q. For 1970?

10 A. For 1970.

11 Q. Now, with respect to the 2512 account, 2512-02 account
12 which you have, I believe, before you, again for the
13 year 1970 of Mr. Dixon, Jr., right, sir, that's the one
14 with \$4,068 in it at the beginning of the year, is it
15 not?

16 A. The balance, yes, sir.

17 Q. Yes, and do you know of your own knowledge whether that
18 particular \$4,068 was a personal loan or a business
19 expense?

20 A. From the account this was probably something that was
21 purchased through the company and charged to Mr. Dixon.

22 MR. FAHRINGER: I am going to object to what
23 probably was.

24 THE COURT: Yes, strike "probably".

25

William Lewis for Government, Redirect.

1 BY MR. STEWART:

2 Q. All right. Do you know without naming what the item
3 was, do you know whether that was a personal obligation
4 of his as opposed to a business expense?

5 A. Yes.

6 Q. All right, sir, and which was it, a personal obligation
7 of his or a business expense?

8 A. Personal.

9 Q. All right. Now, with respect to the items that are
10 contained in the 2510 account during 1970, the debits
11 which are a figure of thirteen thousand, I think one
12 hundred dollars in January, four thousand, an advance
13 of thirteen thousand, an advance of five thousand,
14 excluding now the \$6,500 transaction Mr. Fahringer asked
15 you about and even excluding the \$11,000 transaction
16 that appears later in the year, do you know whether
17 any of the transactions during the first five months
18 of 1970, those debits, whether they are personal items
19 or business expenses?

20 A. I cannot say that.

21 Q. All right. Now, sir, Mr. Fahringer asked you about
22 Dixon, Sr.'s account. Are you familiar with that
23 advance account over the years, the account of Mr.
24 Dixon, Sr.?

25 A. Mr. Dixon, Sr.'s account did not have too much activity.

William Lewis for Government, Redirect.

1 As to why the advances were made to Mr. Dixon, I do not
2 know.

3 Q. All right, sir, but you indicate there was not very
4 much activity?

5 A. Not much.

6 Q. Did it remain below \$10,000 for the entire period of
7 time up until the end of 1970 when the additional \$9,000
8 was added?

9 A. I couldn't answer that without seeing the record, but
10 I don't believe it was over ten thousand.

11 Q. All right, sir, and of the other employee advances or
12 officer advances during the years 1966 through 1970,
13 was there any other employee who had an advance account
14 that went over \$10,000?

15 A. No, sir, I don't think so.

16 Q. Now, if I understand correctly, you said that the two
17 items which were selected in December, around December 4th
18 of 1970 which were ultimately reclassified from Mr.
19 Dixon, Jr.'s account into Mr. Dixon, Sr.'s account and
20 which were four thousand and five thousand dollars
21 respectively for a total of \$9,000, do I understand that
22 he is the one that selected those two items?

23 A. Yes, sir.

24 Q. The particular items?

25 A. Yes, sir.

William Lewis for Government, Redirect.

- 1 Q. Now, you say that in sometime around 1967 Mr. Hale said
2 that the, - that Mr. Dixon's account had to be brought
3 below twenty thousand by the end of the year?
- 4 A. I recall, I seem to recall that.
- 5 Q. All right, sir, and at the time do you recall by how
6 much Mr. Dixon's account was over?
- 7 A. I don't recall.
- 8 Q. All right, but your recollection is it was brought
9 below?
- 10 A. I believe so, yes, sir.
- 11 Q. All right. Now, when you had this conversation with
12 Mr. Hale, was this in regard to proxies or in regard to
13 the 10-K form?
- 14 A. I do not know, sir.
- 15 Q. All right. Do you know whether Mr. Hale had any duties
16 whatsoever with respect to proxies as opposed to the
17 10-K annual report?
- 18 A. I believe he would be more interested in the 10-K than
19 the annual report.
- 20 Q. And indeed is that not true throughout the years Ernst &
21 Ernst dealt with the 10-K?
- 22 A. Yes.
- 23 Q. Now, when Mr. Hale came to you and told you that it had
24 to be brought below \$20,000 by the end of the year, did
25 he tell you why it had to be brought below \$20,000?

William Lewis for Government, Redirect.

- 1 A. I don't recall actually, but the officers or directors
2 loans weren't over \$20,000. I don't recall really the
3 reason.
- 4 Q. The reason that he told you it had to be brought down?
- 5 A. Yes, sir.
- 6 Q. Well, were you clear in your mind that it had something
7 to do with an SEC regulation?
- 8 A. Perhaps at that time, no.
- 9 Q. All right. Do you recall what action you took to bring
10 it below \$20,000?
- 11 A. I don't recall. However, I think it was a reclassifica-
12 tion in the accounts receivable account.
- 13 Q. All right, and that is that some item was deemed to be
14 a legitimate business expense?
- 15 A. I am sorry. I don't quite understand.
- 16 Q. That is when you say there was a reclassification --
- 17 A. In other words, I am talking about classification from
18 the advance account into the employees accounts receivable.
- 19 Q. Well, would that change the nature, would that change
20 the total indebtedness to the corporation?
- 21 A. No, sir.
- 22 Q. I beg your pardon?
- 23 A. No, sir, it would not have.
- 24 Q. Well, how would that satisfy what you then thought to be
25 the rule of taking it below \$20,000 by year end?

William Lewis for Government, Redirect.

1 A: Probably at that point, I am only looking at the 2510.

2 THE COURT: There is no objection here, but it
3 seems to me that so many of these
4 questions or answers are couched in the
5 verbiage "probably we must have", that
6 I think I ought to step in and say again,
7 Mr. Lewis, that you cannot guess. For
8 example, you say "For sure I have to
9 see the records". Do not guess. Next
10 question, please, Mr. Stewart.

11 BY MR. STEWART:

12 Q. All right, sir. Do you know that you did have such
13 conversation with Mr. Hale in 1967?

14 A. Yes, sir.

15 Q. You are positive of that?

16 A. Whether it was 1967 or not, we had in the past had a
17 conversation. I do not recall the exact year.

18 Q. You say we had a conversation with him?

19 A. I had a conversation with him.

20 Q. Was anyone else with you when you had that conversation?

21 A. I don't recall. After that I think it was discussed
22 with Mr. Dixon.

23 Q. Who discussed it with Mr. Dixon?

24 A. Mr. Hale.

25 Q. And did you discuss it with Mr. Dixon?

William Lewis for Government, Redirect.

- 1 A. I believe I was there, yes, sir.
- 2 Q. And what, please, can you recall what Mr. Hale told
- 3 Mr. Dixon?
- 4 A. No, sir, I don't recall the conversation exactly.
- 5 Q. Do you recall the substance of it?
- 6 A. Just that it should be reduced.
- 7 Q. And do you recall now exactly the manner in which it
- 8 was reduced?
- 9 A. No, sir, I do not recall.
- 10 Q. Did you at that time go to the SEC regulations and
- 11 consult them?
- 12 A. No, sir.
- 13 Q. Did Mr. Dixon go to the SEC regulations and consult
- 14 them?
- 15 A. I don't know, sir.
- 16 Q. Did Mr. Hale go to the regulations and consult them?
- 17 A. I don't know.
- 18 Q. Do you have a copy of the regulations in your office
- 19 at AVM Corporation?
- 20 A. I believe there is a service available, yes.
- 21 Q. What was the name of that service?
- 22 A. At that time I believe it was probably Prentice Hall.
- 23 Q. And that is the regular SEC service?
- 24 A. Yes, sir.
- 25 Q. All of the regulations?

William Lewis for Government, Redirect.

- 1 A. Yes, sir.
- 2 Q. And they were in your office?
- 3 MR. FAHRINGER: I am going to object to the leading,
4 your Honor.
- 5 THE COURT: I will sustain the objection.
- 6 BY MR. STEWART:
- 7 Q. Where were the regulations?
- 8 A. I don't recall exactly at that time.
- 9 Q. Did you have occasion during the years, from the year
10 that you were registered in 1965 for the years '65
11 through '70, did you have occasion to consult those
12 regulations?
- 13 A. Myself, no.
- 14 Q. You never looked at them?
- 15 A. No, sir.
- 16 Q. And was there someone in your office who had the
17 responsibility for consulting the regulations?
- 18 A. No, sir. Actually, I looked to our legal counsel for
19 legality on that and they were available and later on
20 we had our house counsel.
- 21 Q. All right, and who was in house counsel?
- 22 A. Mr. Drawback.
- 23 Q. And who was your outside counsel?
- 24 A. Mr. Entwisle.
- 25 Q. All right. Now, when the question came up from

William Lewis for Government, Redirect.

1 Mr. Hale in 1967, did you bring the matter to the
2 attention of Mr. Entwisle?

3 A. No, sir.

4 Q. At anytime thereafter when this account was over twenty
5 thousand, did you bring that fact to Mr. Entwisle's
6 attention?

7 A. No, sir.

8 Q. Why didn't you bring it to Mr. Entwisle's attention?

9 MR. FAHRINGER: I object to that, your Honor.

10 THE COURT: Sustained. I wonder could we step
11 over here a minute, please?

12
13 (Side bar conference held between
14 the Court, Mr. Stewart and Mr. Fahringer
15 as follows:

16
17 THE COURT: I presumed that, Mr. Stewart, that
18 you were back on redirect and there is
19 no objection here and therefore I suppose
20 the questioning can continue, but it seems
21 to me that we are now far afield from
22 where we were on cross examination.

23 MR. STEWART: Well, if I may, your Honor, make a
24 proposal. What has happened here is that
25 Mr. Fahringer put his question of "Where

Discussion.

1 did you get this idea that it was
2 \$20,000 at the end of the year", and
3 he said, the witness said he relied upon
4 Hale, the auditor, and in fact Hale says
5 he cannot --

6 MR. FAHRINGER: I wonder if you are talking a little
7 too loudly.

8 MR. STEWART: Hale says he does not recall any
9 such conversation. There are then a
10 series of conversations in 1968, '69 and
11 '70 with Lyons, the vice-president for
12 finance, and Lyons will testify that he
13 talked on three or four occasions with
14 Lyons, told Lyons what the rule was,
15 specifically told him to go talk to
16 Dixon. This witness says he doesn't
17 remember any of those conversations and
18 I think that in this case or situation
19 where we are dealing with an immunized
20 witness I ought to be entitled to explore
21 his bad memory by these questions so the
22 jury can evaluate, taking what they want
23 to take of his testimony and rejecting
24 what they want to reject. My feeling is
25 the witness is not telling us the whole

110
Discussion.

1 truth and he is doing it because of his
2 friendship for Dixon.

3 THE COURT:

I just think that that could be
based upon memory or on a lot of things
he may testify about. The records, he
was very direct and no problem at all.
I can see when some time goes by a lot
of his answers, and again there is no
objection --

10 MR. FAHRINGER:

I will, Judge. I am sorry.

11 THE COURT:

It seems to me that this shows that
probably we ought to have the records
and so forth. It leaves a very bad
state of affairs here as far as the
record.

16 MR. FAHRINGER:

I am inclined to agree and I will
object.

18 THE COURT:

You want to ask --

19 MR. STEWART:

I want to ask him about the Lyons
conversation.

21 THE COURT:

In other words, you want to continue
on as far as the questioning. I thought
we would finish this afternoon.

24 MR. STEWART:

It is not really that long.

25 MR. FAHRINGER:

Of course I will go back over some

111

Recess.

1 of the things you opened up.

2 THE COURT:

All right.

3
4 (Side bar conference concluded.)

5
6 THE COURT:

Ladies and gentlemen, I thought
that probably we could excuse Mr. Lewis
this afternoon so that he could return
to his home in Jamestown and would not
be required to be with us in the morning
and I have talked to counsel briefly at
the side bar and it seems that it would
be best if we took a recess at this time
until tomorrow at 10:00 when we will
continue the examination of Mr. Lewis,
so we hope you all have a pleasant
evening. Do not talk about the case.
Report to the jury room tomorrow a few
minutes before 10:00 a.m. We will now
be in recess.

21
22 (Recess taken at 5:00 p.m.)

23 I hereby certify that this is a
true and accurate transcript

24 * * * * * stenographic notes in this

25
Official Court Reporter
U.S. District Court

Proceedings, dated 12-5-75.
William Lewis for Government, Redirect.

1 PROCEEDINGS OF DECEMBER 5, 1974, COMMENCING AT 10:20 A.M.

2
3 (Defendant present, counsel present,
4 jury present.)
5

6 W I L L I A M L E W I S , called as a witness on behalf
7 of the Government, and having been previously duly sworn,
8 resumed and testified further as follows:
9

10 (Government's Exhibits 82 through 87(b)
11 were marked for identification.)
12

REDIRECT EXAMINATION BY MR. STEWART: (Cont'd.)

13 Q. Mr. Lewis, during yesterday's examination you testified
14 to a conversation with Mr. Hale of Ernst & Ernst during
15 the latter part of 1967, in which Mr. Dixon's account
16 was over \$20,000, is that correct?

17 A. Yes, sir.

18 Q. You have to keep your voice up.

19 A. Yes.

20 Q. And I believe that you said that you reclassified
21 certain items which brought the account down below
22 \$20,000?

23 A. Yes, sir.

24 Q. Now, in the course of reclassifying those items, did
25 you have any conversation or do you recall a conversation

1 with Mr. Lyons about the problem?

2 A. No, sir, I don't recall any.

3 Q. Now, directing your attention to the latter part of
4 1968, approximately in December, do you recall having
5 a conversation with Mr. Lyons about Mr. Dixon's 2510
6 and 2512 accounts being over \$20,000 again?

7 A. I don't particularly recall, however, at year end
8 the account was analyzed and we tried to get it below
9 \$20,000 to meet the requirements.

10 Q. Who was it that analyzed the account?

11 A. In later years Mr. Lyons was there, he was in charge
12 of the financial structure, and usually I would get
13 the information and pass it on to Mr. Dixon.

14 Q. Pass it on to Mr. Dixon?

15 A. Yes.

16 Q. Did you also pass it on to Mr. Lyons?

17 A. I believe that Mr. Lyons would be aware of it, yes,
18 sir.

19 Q. Well, why?

20 A. Because he was in charge of the financials.

21 Q. But did he have direct access to these ledger cards?

22 A. Yes, sir.

23 Q. Did he routinely review the ledger cards?

24 A. I don't know.

25 Q. Did you routinely review them?

1 A. No, sir.

2 Q. Well, did you always act as intermediary for Ernst &
3 Ernst in bringing the year end confirmation form to
4 Mr. Dixon to sign?

5 A. I believe so, yes, sir.

6 Q. So that by December of each year you were aware of
7 the status of Mr. Dixon's accounts?

8 A. Yes, sir.

9 Q. Now, specifically do you recall a conversation in
10 December of 1963 in which Mr. Lyons said to you that
11 the \$20,000 a year figure --

12 MR. FAHRINGER: Your Honor, I wonder if we could have
13 whether he recalls the conversation
14 before it is related?

15 THE COURT: Yes, I think that would be the best way.

16 BY MR. STEWART:

17 Q. You said that you did have conversations with Mr.
18 Lyons at year end of 1963 regarding the account, is
19 that correct?

20 A. Sir, my recollection is that we from time to time, on
21 occasions that I cannot specifically recall, matters
22 of this nature were discussed, yes, sir.

23 Q. About Mr. Dixon's account?

24 A. Yes.

25 Q. It was at year end?

1 A. Generally, yes, sir.

2 Q. All right. Now, in any of the conversations with
3 Mr. Lyons at year end about Mr. Dixon's account did
4 Mr. Lyons ever read to you the rule on the \$20,000
5 limit?

6 A. I believe I have seen it. Whether it was read by
7 Mr. Lyons to me or not, there is a period of time,
8 which I can't recall the exact time, when this matter
9 came to my attention.

10 THE COURT: Mr. Lewis, do you recall whether or not
11 he read it to you?

12 THE WITNESS: I don't recall him reading it to me, no,
13 sir.

14 BY MR. STEWART:

15 Q. Do you recall him explaining the details of the rule?
16 This is regarding now the 10-K, the \$20,000 for the
17 10-K.

18 MR. FAHRINGER: Your Honor, I wonder if we could have a
19 time on this?

20 THE COURT: Well, no. I will overruled the objection.
21 At any time?

22 THE WITNESS: Yes, sir, we have discussed this matter.

23 BY MR. STEWART:

24 Q. And did your discussion not focus upon the question
25 that the rule -- the reporting requirement was a

1 reporting requirement for loans any time during the
2 year?

3 A. I don't recall when that specifically came up, but it
4 was discussed. I can't say at what particular point
5 in time, I don't recall the exact year.

6 Q. Did Mr. Lyons discuss with you that travel
7 deductions and legitimate business expenses could
8 be deducted or did not figure in the \$20,000 limit?

9 A. I don't recall that, sir.

10 Q. Upon learning that the \$20,000 figure was not a year
11 end requirement, did you take any action to check
12 the requirement with respect to the proxy rule, the
13 \$10,000 rule?

14 A. No, sir.

15 Q. Did you continue -- after learning that the requirement
16 was not a year end requirement, did you continue to
17 sign annual 10-K reports which were submitted to the
18 SEC and which did not contain a Schedule 2?

19 A. Yes, sir.

20 Q. Mr. Lewis, I show you now an item which has been
21 premarked as Government's Exhibit 82, can you describe
22 that particular document for us, please?

23 A. It is a general ledger 2510 account for L.A. Dixon, Jr.
24 for the year 1967.

25 Q. You will have to keep your voice up.

1 A. For the year 1967.

2 Q. All right, sir. And that is in the same format as
3 Government's Exhibit 2, that is, the general ledger
4 for 1970, is it not?

5 A. Yes, sir.

6 Q. All right, sir. Government's premarked Exhibit 33,
7 can you tell us what that is?

8 A. An employer's receivable account.

9 Q. For what year?

10 A. 1967.

11 Q. For what person?

12 A. L.A. Dixon, Jr.

13 Q. All right, sir. And the year end balance there is
14 some \$20,000?

15 MR. FAHRINGER: Your Honor, may I object to this? These
16 are additional exhibits that I have spoken
17 to Mr. Stewart about. There may be some
18 question of their admissibility. It goes
19 back to 1967.

20 MR. STEWART: I will have him just identify them.

21 THE COURT: All right.

22 BY MR. STEWART:

23 Q. Mr. Lewis, showing you Government's premarked Exhibit
24 34, would you identify that for us?

25 A. Yes, sir. General ledger account 2510, L.A. Dixon, Jr.,

1 for the year --

2 THE COURT: Mr. Fahringer, you wouldn't quarrel that
3 these are records of AVM, you quarrel
4 is that these are out of time?

5 MR. FAHRINGER: It may not be material. I will stipulate --

6 THE COURT: We don't have to have them identified
7 then. He argues that these are prior to
8 the events which are set forth in the
9 indictment.

10 MR. STEWART: Yes, sir. All right, as long as that is
11 agreed. I would, however, with respect
12 to premarked Exhibits 36(a) and (b) and
13 37(a) and (b), I would simply like to
14 ask the witness one question for clari-
15 fication.

16 BY MR. STEWART:

17 Q. Mr. Lewis, with respect to the 1969 general ledgers,
18 there were actually two cards for that year, were there
19 not, you changed over from corporate to some other
20 form?

21 A. I don't recall why there are two cards at that partic-
22 ular time, sir.

23 Q. All right, sir. Now, sir, with respect to the proxy
24 statement only, not the 10-K, with respect to the
25 proxy statement only, what was the reason that you took

1 the account down in 1970 below the \$20,000 figure
2 which you say you thought was the top limit at the
3 end of the year, why did you take it down to that
4 figure?

5 A. Because we understood that if it was below \$20,000
6 it wouldn't have to be reported on the 10-K or the
7 proxy statement.

8 Q. All right. Why didn't you wish to report it on the
9 10-K or the proxy statement?

10 MR. FAHRINGER: I object to it, if your Honor please.

11 MR. STEWART: That is very relevant, your Honor.

12 THE COURT: I will overrule the objection.

13 BY MR. STEWART:

14 Q. You may answer.

15 A. I believe it was the fact that in getting it under
16 \$20,000 it wasn't necessary to report it, which was
17 our understanding. The reason that we did that was
18 we felt it would probably -- we would probably rather
19 not have it on the proxy statement.

20 THE COURT: All right, Mr. Lewis, don't guess. If
21 you know, say so. If you don't know,
22 tell us you don't know. Strike everything
23 after probably.

24 THE WITNESS: We felt we would rather not have it on
25 the proxy statement.

1 BY MR. STEWART:

2 Q. And when you say "we" of whom are you speaking?

3 A. Mr. Dixon and the people involved in the proxy state-
4 ment.

5 Q. Please name them?

6 A. Mr. Dixon, myself, and I don't recall who else may
7 have been in on it.

8 Q. Why didn't you want it on the proxy statement?

9 MR. FAHRINGER: That is objected to, if your Honor please.

10 MR. STEWART: That is extremely relevant, your Honor.

11 THE COURT: He has given an answer to that. I will
12 now sustain the objection.

13 MR. STEWART: May I have just a moment, your Honor?

14 THE COURT: Yes.

15 BY MR. STEWART:

16 Q. Mr. Lewis, did you ever submit any of the information
17 on these accounts, the 2510 and 2512 accounts, from
18 1967 through 1971 to Mr. Entwisle, counsel for the
19 Corporation?

20 A. No, sir, I don't recall submitting any to him.

21 Q. You never asked Mr. Entwisle for a legal opinion as to
22 either the 10-K requirement or the proxy requirement?

23 A. No, sir.

24 MR. STEWART: I have no further questions.

25 THE COURT: Mr. Fahringer?

1 CROSS EXAMINATION BY MR. FAHRINGER:

2 Q. Mr. Lewis, the last few questions that were asked you
3 by Mr. Stewart, concerning the bringing of the account
4 down, did you believe as a result of your discussions
5 with Mr. Hale of Ernst & Ernst that if it was under
6 \$20,000 it complied with the law?

7 A. That was my understanding.

8 Q. And if it complied with the law it didn't have to be
9 reported, isn't that so?

10 A. Correct.

11 Q. So is it fair to say by bringing the account down you
12 thought that you were complying with the SEC regulations?

13 A. Yes, sir.

14 Q. Now, wasn't there another factor that came up in this
15 case from time to time concerning the reporting on
16 the 10-K having to do with materiality, isn't that
17 true, there was some talk about the office about that?

18 A. I don't recall, sir.

19 Q. Let me put this question to you. Do you remember Mr.
20 Lyons, who ultimately became the financial director,
21 isn't that so?

22 A. Yes, sir, he was in charge of the finances.

23 Q. Do you remember him having some discussion in your
24 presence with people from E & E where he discussed
25 whether or not this had to be reported because of

1 materiality?

2 A. I don't recall it particularly.

3 Q. You don't say that didn't happen, you just don't recall
4 it?

5 A. I don't recall it.

6 Q. All right. Now, would it be fair to say that in the
7 year 1971 and '70 there was still a great deal of
8 confusion with this rule, whether it was year end or
9 whether it was any time during the year?

10 A. It was my understanding that it was year end. When I
11 became aware of when it was otherwise, I can't recall
12 the exact period.

13 Q. All right. Could it have been in 1972?

14 A. It could have been, yes.

15 Q. Now, back in 1967 when you had these conversations
16 with Mr. Hale, you indicated that some items were
17 reclassified, do you remember using those terms?

18 A. Yes, sir.

19 Q. Do you recall at that time discussing some expense
20 items with the people from E & E that were in that
21 advance account, some travel expense items?

22 A. I don't recall that, sir.

23 Q. All right. May I ask you this? In terms of the
24 reclassifying, do you recall whether some of the
25 items that were reclassified were expense items,

1 putting aside the conversation?

2 A. They were personal items. They were items purchased
3 for Mr. Dixon, in charge of the Company, they were
4 reclassified into an account receivable rather than
5 a loan account.

6 Q. Do you recall, in terms of the reclassification process,
7 reclassifying any expense items?

8 A. No, sir.

9 Q. Now, you have indicated to us that one of your
10 responsibilities was that at the shareholders meeting
11 every year you handled the actual voting of the
12 proxies?

13 A. Yes, sir.

14 Q. Now, as a result of that have you some familiarity
15 with the shareholders list, that is to say, the list
16 of stockholders?

17 A. Yes, I have a list at the office.

18 Q. Were there a large number of shareholders who resided
19 in the Jamestown or western New York area?

20 A. There were quite a few, yes, sir.

21 Q. All right. Now, at the shareholders meetings which
22 were held, were they held in Jamestown, incidentally?

23 A. Yes, sir.

24 Q. All right. Did anyone ever show up at the shareholders
25 meetings, any shareholders?

1 A. Yes, sir.

2 Q. About how many would you say?

3 A. The attendance at our annual meeting ran in the
4 neighborhood of approximately sixty, seventy-five,
5 eighty people, in that area.

6 Q. And in the -- early in 1964 and 1967, you had about
7 14,000 shareholders, did you not?

8 A. I can't recall exactly the number but, however, I can
9 say this, at the time AVM Corporation was spun off
10 from Rockwell in 1964, we started with approximately,
11 I believe, 18,000 stockholders. It dropped during
12 a period of years there, and down into the area of
13 currently approximately 8000. It has been at the
14 8000 level for several years. I don't recall the
15 figures of each and every year.

16 Q. Incidentally, Mr. Lewis, among the shareholders that
17 would be at the meeting, when you gave us that figure
18 that included the directors?

19 A. Included everyone.

20 Q. All right. They, I take it, were fairly large share-
21 holders, some of them were?

22 A. Some were.

23 Q. All right. I would like to once again, if I may,
24 ask this question of you. Did Mr. Dixon ever say
25 anything to you or indicate anything to you that you

1 were not to disclose these transactions or loans to
2 anyone?

3 A. No, sir.

4 MR. FAHRINGER: Thank you.

5 THE COURT: Mr. Stewart, anything further?

6 REDIRECT EXAMINATION BY MR. STEWART:

7 Q. Anyone except the stockholders and in the proxy state-
8 ment, isn't that right?

9 MR. FAHRINGER: I object to that, your Honor.

10 THE COURT: We have to have an end. I think the jury
11 is aware of what was done, and these are
12 argumentative questions, these are
13 summation points. So I will sustain the
14 objection.

15 MR. STEWART: I have no further questions.

16 THE COURT: Thank you very much. You may step down.
17 (Witness excused.)

18 THE COURT: Keep in mind, ladies and gentlemen, that
19 you are not to make up your mind in this
20 case upon the testimony of any one witness.
21 You must wait for the testimony of all of
22 the witnesses, and the examination of all
23 of the exhibits. So certainly do not
24 jump to any conclusions one way or the
25 other in this case based upon the testimony

1 of one witness alone. Next witness,
2 please.
3 MR. STEWART: May it please the Court, we have a stip-
4 ulation that I would like to read to the
5 jury.
6 THE COURT: Fine.
7 MR. STEWART: It is agreed and stipulated to by counsel
8 for the Government and by counsel for
9 the defense, and by the defendant, that if
10 the following stockholders were called to
11 testify, they would testify as follows:
12 In March of 1971, Robert Finn was the
13 holder of 600 shares of AVM stock; Arthur
14 Mall was the holder of 3760 shares of
15 AVM stock; Mrs. Lena Mall was the holder
16 of 500 shares of AVM stock, and Arlene
17 Elliott was the holder of 80 shares of
18 AVM stock. All of these stockholders
19 in March of 1971 received proxies, which
20 are now Government's premarked Exhibits
21 72, 73, 74, and 75 respectively. Each
22 of them received with the proxy a proxy
23 statement, which is Government's pre-
24 marked Exhibit 71, and these proxies and
25 proxy statements were received in the mail

1 by each stockholder at his or her home.
2 After examining the material, each of the
3 stockholders signed and dated the proxy
4 and placed the proxy in a preaddressed
5 envelope, which had come with the proxy
6 and the proxy statement, and mailed the
7 executed, signed proxy to the AVM Corpor-
8 ation at Jamestown, New York, on or about
9 the date which appears on the proxy cards,
10 which are marked for identification
11 purposes. Thank you, your Honor.

12 THE COURT:

Ladies and gentlemen, a stipulation means
13 that the parties agree that if these
14 witnesses testified here under oath
15 that is what they would testify to. You
16 can consider this information just as you
17 would the testimony of a witness who
18 appeared here and testified on the stand.
19 It seems to me, Mr. Stewart, that it would
20 be best if we marked that stipulation as
21 an exhibit and had it introduced into
22 evidence for the record.

23 MR. STEWART:

All right, sir. It is pretty rough.

24 THE COURT:

As long as it is readable. There are no
25 other notes on it?

1 MR. STEWART: No, sir.
2 (Stipulation referred to was marked
3 Government's Exhibit 38 and received in
4 evidence.)
5
6
7

8 * * * * *

9 I hereby certify that the
10 true and accurate transcript of the
11 stenographic notes in this case is
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James C. Noel
U.S. District Court

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA

5 -vs-

CR. 1973-31

6 LLOYD DIXON, JR.,

7 Defendant.
8 -----

9 Testimony of the witness ROBERT M. ENTWISLE in the
10 trial of the above entitled action held before the
11 HON. JOHN T. CURTIN, United States District Judge, and
12 a Jury, on December 5, 1974, at Buffalo, New York.

13 APPEARANCES: JOHN T. ELFVIN, ESQ.,
14 United States Attorney, by
15 ROBERT C. STEWART, ESQ., and
16 DENNIS P. O'KEEFE, ESQ.,
Department of Justice,
Appearing on behalf of the Government.

17 HERALD P. FAHRINGER, ESQ.,
18 Appearing on behalf of the Defendant.

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20 * * * * *
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24
25

1 R O B E R T M. E N T W I S L E , 237 Hunt Road,
2 Pittsburgh, Pennsylvania, called as a witness on behalf of
3 the Government, and being first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION BY MR. STEWART:

6 Q. Mr. Entwisle, what is your occupation?

7 A. I am a lawyer.

8 Q. If you will move up just a bit closer to the microphone.
9 And during the period between 1964 and the present
10 day, are you counsel for any -- were you counsel for
11 the AVM Corporation?

12 A. I was general counsel for the AVM Corporation from
13 April 1, 1964 until approximately May of 1973.

14 Q. Did you have any other connection with the AVM Corpor-
15 ation beside your position as general counsel?

16 A. Yes, sir. Throughout that same period, and continuing
17 to today, I was and am a director of AVM Corporation.
18 I was also during the time that I was general counsel
19 an assistant secretary of the Corporation and its
20 subsidiaries.

21 Q. How many directors were there in let us say 1970?

22 A. I believe about nine.

23 Q. Now, did there come a time when the AVM Corporation
24 became registered with the Securities & Exchange
25 Commission and subject to its regulations?

1 A. Yes, sir.

2 Q. When was that?

3 A. In the year 1965, as a result of an amendment to the
4 1934 Securities Act, which amendment was passed in
5 1964, the Company became subject and filed its Form 10
6 original registration statement in the year 1965.

7 Q. All right, sir. You say "filed it," with whom?

8 A. With the SEC.

9 Q. All right, sir. Now --

10 A. That was filed, I believe, in the month of April 1965.

11 Q. I would show you an item which has been premarked as
12 Government's Exhibit 1, and ask you if you could
13 identify this?

14 A. Yes, sir. This is the original Form 10 registration
15 statement of AVM Corporation, which was filed with
16 the Securities & Exchange Commission in Washington.
17 It shows here filed April 28, 1965, that checks with
18 my memory.

19 Q. Can you tell us who prepared that?

20 A. That is the work product of a good many people. The
21 Form 10, like the Form 10-K, is basically divided into
22 two parts., the forepart and back part. The forepart
23 is narrative, the back part is financials and schedules.
24 The narrative forepart I prepared in draft form based
25 on information that I had, submitted it for review and

1 comment to the officers of the Corporation, and when
2 finalized, if you will, the back part, the financials
3 and the schedules, then and always thereafter were
4 prepared, I believe, originally by the Company, reviewed
5 and approved and signed and certified by the independent
6 accountants, Ernst & Ernst.

7 Q. All right. Ernst & Ernst have been the independent
8 accountants from the time you first became registered
9 with the Securities & Exchange Commission?

10 A. Yes, sir.

11 Q. Now, when you say that the forepart was prepared by
12 yourself and then reviewed by the officers, which
13 officers of the Corporation reviewed the forepart?

14 A. That would be the principal officers, Mr. Stewart,
15 being Mr. Dixon, Mr. Lewis, Mr. Lyons, possibly Mr.
16 Hammond. He was not an officer, but I believe he
17 worked pretty closely with Mr. Lyons.

18 Q. Those are the four individuals then that reviewed this
19 document, and was that practice followed with respect
20 to the subsequent annual filings of the 10-K report
21 with the SEC?

22 A. Yes, sir. In subsequent years it was my practice to
23 prepare in draft form the narrative or forepart of the
24 10-K based on such information as I had on the Company,
25 and then send it up to Messrs. Dixon, Lyons and Lewis

1 for their review, correction and comment, and after
2 that input it finally got to the point where it was
3 satisfactory and a complete document, as far as the
4 forepart was concerned.

5 Q. Now, with respect to the second part of the document,
6 the schedules, and so forth, you say that these were
7 prepared by the Company?

8 A. It is my understanding that they were initially
9 prepared by the Company, and then sent on to Ernst &
10 Ernst for their review, correction, comment and certifi-
11 cation. Actually the financials and schedules that
12 are in the Form 10 and in the Form 10-K are really the
13 certified audited statement of the Company at year
14 end.

15 Q. All right, sir, and when you say they were prepared
16 by the Company, who in the Company had responsibility
17 for the preparation of those items?

18 THE COURT: Excuse me, Mr. Entwisle, did you have
19 anything to do with the preparation of the
20 back part?

21 THE WITNESS: No, sir.

22 THE COURT: The accounting part?

23 THE WITNESS: No, sir.

24 THE COURT: Mr. Stewart, it seems to me that you will
25 have someone here who is clearly familiar

1 with it, and if there is some point you
2 want to bring out with Mr. Entwisle about
3 this, fine, but I can't see any purpose
4 in having him guess about things that he
5 is not familiar with. He is familiar,
6 certainly, with the front part.

7 MR. STEWART: All right, sir.

8 BY MR. STEWART:

9 Q. Now, when the AVM Corporation became registered with
10 the Securities & Exchange Commission, I believe you
11 call that going public, don't you?

12 A. Technically it is known as becoming a 12G company,
13 because Section 12(g) of the Act is the one that
14 triggers a company with this group of stockholders
15 and this figure of assets within its purview. AVM
16 prior to that had been a public company but in the
17 sense they had stockholders all over the country. But
18 this is known as becoming a 12G company.

19 Q. That is when you are registered and subject to the
20 regulations?

21 A. That is right, sir.

22 Q. All right, sir. Upon becoming registered what, if
23 anything, did you do to insure compliance with the
24 regulations of the SEC?

25 A. Prior to becoming -- prior to the filing of the Form

1 10, the Commission had written to the Company and asked
2 a number of questions as to whether the Company was
3 subject, and it was, and as a result of that the
4 Commission then sent on to the Company a complete set
5 of the rules, that is, the rules governing the pre-
6 preparation of a Form 10, a Form 10-K, the proxy statement
7 rules, the SX rules, which have to do with the prepara-
8 tion of the back part of the Form 10 and the Form 10-K.

9 Q. That is the schedules?

10 A. The schedules and the financials as well, and those
11 rules were studied and --

12 Q. By whom?

13 A. By me and they were sent to, I believe, Mr. Lewis, and
14 I had a sit down, to the best of my memory, in March
15 of 1965 with Mr. Lewis, Mr. Hale and Mr. Goodman from
16 Ernst & Ernst, going over the registration rules for a
17 Form 10, and I believe what we did at that time was
18 all get generally familiar with the requirements of
19 this kind of a filing, and then agree on who was
20 responsible to do what, and the initial division of
21 responsibility started there and never changed.

22 Q. All right, sir. Now, did you have any conversations
23 with Mr. Dixon about those requirements?

24 A. I'm sure I did, because Mr. Dixon and Mr. Lewis and
25 I went to a seminar in Philadelphia that spring on the

1 subject of the amendments to the Securities Act of
2 '34 and 12(g) companies. It was a one day seminar
3 in Philadelphia. It was not on the proxy thing
4 particularly, it was on the 12G company registration.

5 Q. All right, sir. Were you finished?

6 A. Yes.

7 Q. Was there any material that you obtained at that
8 seminar that related to proxy disclosures?

9 A. No, sir, that was a later seminar.

10 Q. Would you tell us about the second seminar?

11 A. In March of 1966, which was the first year that AVM
12 was required to file its proxy statement under the
13 purview of the SEC, Mr. Dixon, Mr. Lewis and myself
14 attended a seminar in -- a practicing law institute
15 seminar in New York City on the subject of disclosure
16 requirements of public companies and insiders. It was
17 a two day seminar. We only stayed for the first day,
18 as I recall it.

19 Q. All right, sir. Now, thereafter in -- I believe you
20 had responsibility for preparing the proxy statement
21 initially?

22 A. Yes, sir.

23 Q. And did you make disclosures on proxy statements in
24 accordance with the regulations of the SEC?

25 A. I'm --

1 Q. Various types of disclosures?

2 A. I'm not sure that I quite understand your question,
3 Mr. Stewart.

4 Q. Well, you mentioned that the seminar, the practicing
5 law seminar, was on the subject of disclosures?

6 A. Yes.

7 Q. I take it there are a number of disclosures required?

8 A. Yes, sir, there are.

9 Q. Did you have occasion in the course of drafting these
10 proxy statements to make various disclosures to the
11 stockholders as required by the Securities & Exchange
12 Commission between 1966 and 1970?

13 A. Yes, sir. I framed the draft of the proxy statement,
14 to the best of my ability, in such a way as it would
15 bring forth full disclosure of anything and everything
16 that the rules required, and the procedure for doing
17 the proxy statement during the time that I was general
18 counsel, commencing with the first proxy statement in
19 1966, which covered the annual stockholders meeting
20 which took place the third Tuesday of April of 1966,
21 the practice was for me to prepare the first draft of
22 the proxy statement based on such information as I
23 had, and then submit it to Mr. Lewis with a copy to
24 Mr. Dixon for input. The first draft had many, many
25 blanks in it, blanks such as stock ownership, the

1 stock option information, thrift plan ownership, the
2 pension information, there was a paragraph always on
3 transactions, and the practice was that with this draft
4 in front of the officers, they were expected to give
5 back to me full disclosure based on the rules.

6 Q. Did you from 1967 to 1971 receive any disclosure
7 information from either Mr. Dixon or Mr. Lewis regard-
8 ing loans to Mr. Dixon?

9 A. What is the terminal period?

10 Q. 1967 through December 1971?

11 A. No, sir.

12 Q. Now, at the PLI course in March of 1966, had you
13 received any material which outlined the disclosures,
14 the types of disclosures which were required on proxy
15 statements?

16 A. The attendees at the seminar were given a blue bound
17 looseleaf notebook, if you will, which contained a
18 good bit of information on disclosure, and did contain
19 an actual verbatim copy of Item 7 of the Proxy Rules --

20 MR. FAHRINGER: Excuse me. I am going to object to this
21 on the grounds I urged the other day,
22 unless there is some proof, your Honor,
23 that Mr. Dixon was --

24 THE COURT: Mr. Dixon was there with you?

25 THE WITNESS: Yes, sir.

Robert M. Entwisle for Government, Direct.

1 THE COURT: You were there one day?

2 THE WITNESS: One day.

3 THE COURT: Can you recall now whether this portion,
4 the proxy rule was discussed the day you
5 were there?

6 THE WITNESS: Your Honor, it was, to the best of my
7 recollection, covered at noon while we
8 were sitting having lunch by a speaker.

9 THE COURT: I will overrule your objection. There
10 can be cross examination on this, and
11 whether or not this information came to
12 Mr. Dixon or did not is a question for
13 the jury.

14 BY MR. STEWART:

15 Q. I show you Government's Exhibit 81, if you would just
16 examine that. Can you identify that?

17 A. This appears to be the booklet or a copy of the booklet
18 that was distributed to the attendees at that seminar.

19 Q. Did you obtain one of those?

20 A. Yes, I did.

21 Q. Did Mr. Lewis obtain one?

22 A. I have no personal direct knowledge as to whether
23 Mr. Lewis did or not.

24 Q. All right. Do you know whether Mr. Dixon did?

25 A. I have no direct knowledge of that, sir.

1 Q. But you got your copy?

2 A. I got mine.

3 Q. All right. I take it that is not your copy?

4 A. No, sir.

5 Q. All right. Now, I want to direct your attention to the
6 year 1970 with respect to the preparation of the proxy
7 statement for that year, and I show you an item which
8 has been premarked Government's Exhibit 77, and I
9 refer you specifically to the second page under the
10 coverlet, do you recognize this particular document
11 which consists of six pages?

12 A. Yes, sir, I do.

13 Q. Can you tell us what it is, please?

14 A. That is the first draft of the proxy statement of AVM
15 Corporation prepared for the annual stockholders
16 meeting of April 20, 1971 by my office and myself.

17 Q. All right, sir. Now, the words "first draft" up here,
18 can you tell us whose handwriting that is?

19 A. That is my handwriting, sir.

20 THE COURT: Excuse me, what exhibit is this?

21 MR. STEWART: Government's Exhibit 77, your Honor, page
22 2 et seq.

23 BY MR. STEWART:

24 Q. And on page 3 of that particular draft, first draft,
25 there is a notation here about the date, do you

1 recognize whose handwriting that is?

2 A. That is my handwriting, sir.

3 Q. All right, sir. Now, can you tell us, sir, from
4 examining this particular file, whether or not a copy
5 of this was sent to Mr. Dixon for review and analysis
6 prior to being sent to the SEC and the stockholders?

7 A. A copy of the file or a copy of the first draft, sir?

8 Q. The first draft, not the file.

9 A. Yes, sir. My letter of January 11, 1971, which shows an
10 open copy to Mr. Dixon.

11 Q. You are now referring to page 1 of that particular
12 exhibit as being the letter?

13 A. Yes, sir.

14 Q. All right.

15 A. As the letter that transmitted this draft.

16 Q. All right. Now, during the preparation of that
17 particular proxy that is for the annual meeting in
18 April of 1972, did you receive any material from Mr.
19 Lewis which was new material and which related to the
20 Securities & Exchange regulations?

21 A. Yes, sir. In the period of time that we were giving
22 birth to this proxy statement, Mr. Lewis sent me four
23 or five written materials containing facts which were
24 called for by the proxy rules and which I, of course,
25 included in the proxy statement.

1 Q. None of those facts related to loans to officers?

2 A. No, sir.

3 Q. Now, did there come a time when you learned that there
4 had been during past years loans to corporate officers?

5 A. Yes, sir.

6 Q. Can you tell us, please, when that was that you learned
7 of this fact?

8 A. Following Mr. Lewis' second appearance before the
9 federal grand jury in Buffalo in -- I believe it was
10 September 12th of 1972, he was debriefed by Mr. Floyd
11 of the Buffalo law firm here of Phillips, Lytle, who
12 were the AVM counsel in Buffalo, representing the
13 Company in connection with the grand jury matter, and
14 by Mr. Rogovin of Arnold & Porter of Washington, also
15 representing the Company in connection with its grand
16 jury problems, and myself. As a result of that de-
17 briefing and his disclosures as to what he had been
18 asked or how he had testified, we became concerned --
19 Q. Don't tell us your concern. Tell us if there came a
20 time when you initiated conversation with other officers
21 in the Company?

22 A. It was then I asked Mr. Lewis to pull together all of
23 the travel advance accounts, advance accounts of any
24 kind, of all officers of the Company, not just for
25 1970, but for all years back to April 1, 1974 --

1 Q. 1974?

2 A. '72, excuse me -- back to April 1 of 1964 is what I
3 am saying, which was the beginning of the Company.

4 Q. All right, sir.

5 A. And I began to make my own investigation, and I did
6 interview Mr. Dixon, according to my records, in flight
7 on the Company plane on, I believe, October 3, 1972,
8 and asked him to tell me what was going on with respect
9 to these advances, and he gave me a statement at that
10 time, which put me on general notice of the fact that
11 he had been borrowing money from the Company. He said
12 that he had done so under a misapprehension of the
13 SEC filing rules. I interviewed Mr. Hammond a few days
14 after that.

15 Q. Excuse me. Without getting to Mr. Hammond, did you at
16 that time ascertain from Mr. Dixon the specific amounts
17 that had been borrowed from the Company?

18 A. No, sir.

19 Q. Did there come a time when you did ascertain from Mr.
20 Dixon the specific amounts which had been borrowed from
21 the Company?

22 A. Yes, sir.

23 Q. And do you have those figures with you today?

24 A. Yes, sir.

25 Q. Are you able to tell us what the specific figures were?

1 A. This goes clear back to --

2 THE COURT: Excuse me, Mr. Stewart, isn't that what
3 we had yesterday, chapter and verse, and
4 all the records of the Company?

5 MR. STEWART: No, sir. I think perhaps I should explain
6 at the side bar.

7 (Thereupon the following discussion ensued
8 at the sidebar:

9 THE COURT: May I don't understand the question. It
10 seems to me you were asking what the figures
11 were for the amounts of the loans.

12 MR. STEWART: Yes, sir. The word "loans" is the key to
13 it. In other words, we have to distinguish
14 between legitimate business expenses and
15 personal items. Now, this is where --
16 we have talked, and we are in dispute,
17 as a matter of fact, on only I think about
18 \$10,000.

19 MR. FAHRINGER: Some amount we could agree upon.

20 MR. STEWART: Some amount we could agree upon. He has
21 admissions as to specific items which
22 Dixon admitted were loans.

23 MR. FAHRINGER: Excuse me, I'm sorry. My only concern,
24 Judge, that I was about to object to,
25 I think it ought to be held to 1970, the

1 MR. STEWART: I have no objection.
2 MR. FAHRINGER: He started asking about 1967. I was about
3 to object to 1967.
4 THE COURT: There is no problem about any attorney --
5 he was the attorney, the general counsel
6 for the AVM Corporation?
7 MR. STEWART: He was the general counsel.
8 THE COURT: He was not the attorney for Mr. Dixon?
9 MR. STEWART: No.
10 MR. FAHRINGER: That is true, Judge.
11 THE COURT: Okay. I see what you mean.
12 MR. FAHRINGER: The only thing, while we are here, I don't
13 know exactly what he is going to state.
14 My concern is that this matter of loans
15 be related to the year of the indictment,
16 if we are talking about admissions. That
17 would be my objection. I don't think it
18 would be proper to come out and say he
19 told me he borrowed \$70,000 during all
20 this period of time, since their only
21 claim is --
22 MR. STEWART: We do have a carry over balance of
23 \$13,100.
24 MR. FAHRINGER: I have no objection to that.
25 MR. STEWART: If you want to stipulate that --

1 MR. FAHRINGER: Judge --

2 THE COURT: He may not be able to explain it if you
3 hold him down to that.

4 MR. FAHRINGER: What I am saying, I wouldn't want the
5 jury to convict this man because he didn't
6 report in 1965 or 1968 or 1969, that is
7 my concern, of course. It is only this
8 year they claimed, 1970, that he violated
9 the non reporting provisions.

10 MR. STEWART: He admitted some \$60,000 in loans for the
11 house, \$45,000 for the stocks.

12 MR. FAHRINGER: That is objectionable. I don't think
13 it makes any difference what the loan is
14 for, it is an admission it was a loan.

15 THE COURT: It depends. You can't determine whether
16 or not it is a loan or business expense
17 sometimes until you know what it was taken
18 for.

19 MR. FAHRINGER: Judge, will you hear me? If it is a loan,
20 I would be willing to stipulate, Judge.
21 May I advise you of this. I think there
22 is an awful lot of prejudice in this area.
23 He wants to know back in 1967 if there was
24 money taken for a swimming pool. If we
25 get into that, I think it is highly

1 prejudicial, your Honor. I would stipulate
2 to avoid the prejudice.

3 (Thereupon the discussion at side bar
4 terminated.)

5 THE COURT:

I thought we would be able to solve the
6 problem quickly, but we go from one point
7 to another. I think the best thing to do
8 is to take a recess. Why don't you step
9 into the corridor for a moment. That may
10 be sufficient for now. Will you step into
11 the corridor, please?

12 (Jury exited the courtroom at 11:15 A.M.)

13 THE COURT:

Mr. Fahringer?

14 MR. FAHRINGER:

15 Yes, your Honor. Your Honor, my concern
16 is -- concerning this matter before the
17 Court immediately -- is that it is irrele-
18 vant to these proceedings as to what the
19 funds were used for, as long as it is
20 acknowledged they were loans. Now, Judge,
21 what I wanted to alert you to is that it
22 is a fact that some of these loans were
23 used for a swimming pool and for other
24 things that I think would be highly
25 prejudicial to the jury, where the jury
would become more preoccupied with what

1 did he take this money and spend it for.
2 THE COURT: You can't have it both ways.
3 MR. FAHRINGER: I will stipulate then to the amounts. I
4 want to say this, if you are inclined to
5 let that proof in --
6 THE COURT: I certainly am. Let me make a statement.
7 As I understand it, there are monies here
8 which are in dispute. You claim that there
9 are some monies which ought to be consider-
10 ed as legitimate business expenses, and
11 therefore under the rules would not be
12 loans. On the other hand, the Government
13 says, 'We have evidence that monies which
14 were reflected in certain accounts, which
15 would be a business account; were in fact
16 loans because these monies were used for
17 things like a personal swimming pool or
18 some other repair of house or whatever.'
19 But if they have evidence to that effect,
20 it certainly is material. Now, I do not
21 think under the circumstances that it is
22 unduly prejudicial. But you can't have
23 it both ways. If you want to stipulate
24 that these monies are loans, you may do
25 do. If you don't want to stipulate that

1 they are loans, I am going to permit the
2 Government to show what the monies were
3 used for. Now, let's not have anymore --

4 MR. FAHRINGER: I will stipulate.

5 THE COURT: All right. Do you have a stipulation
6 ready?

7 MR. STEWART: We can draw it, your Honor. It shouldn't
8 take but just a moment, if we could have
9 a short recess.

10 THE COURT: I have some other things to do. Mr. White,
11 have the jury go downstairs, please, and
12 perhaps we can resume in fifteen minutes,
13 do you think?

14 MR. FAHRINGER: Yes, your Honor. But may I say that I
15 believe we have some agreement on business
16 items, too. In other words, the stipulation
17 would take into account --

18 THE COURT: Mr. Stewart, if we can agree on some
19 business items, perhaps you thought at one
20 time there was some question, that you
21 might have been able to show some evidence,
22 but now you feel these are legitimate
23 business items, let's do it. I think it
24 is better for all concerned if we have a
25 clear statement without a lot of wrangling.

1 MR. FAHRINGER: I wonder if I might interject this in
2 terms of conserving time? It is my under-
3 standing that Mr. Entwisle -- the figure
4 that Mr. Entwisle was going to testify to
5 is lower than the figure the Government
6 claims. In other words, Mr. Dixon said
7 \$23,000 of this is personal loans, and
8 I would --

9 THE COURT: Is it agreeable? Mr. Entwisle was about
10 to tell us what the conversation was.

11 MR. STEWART: Well, we have talked at some length about
12 these loans, and it seems to me right now
13 that we are on the verge of getting this
14 resolved to the satisfaction of both of
15 us, perhaps by a bit of compromise, and
16 I think we can close this case right now
17 if we can agree on this figure. It seems
18 possible to me that we may be able to do
19 it with a bit more testimony from Mr.
20 Entwisle. Of course, he is only one
21 witness, the Ernst & Ernst people also
22 had conversation about the loans.

23 THE COURT: The other thing, too, is this. What I as
24 a layman or Mr. Dixon as a layman might
25 have considered as loans, when you get
the accountant's eye there, he would say,

1 'Well, frankly, that is a business expense.'
2 As far as recalling figures, numbers of
3 figures, I suppose, as far as the swimming
4 pool -- now, some people can tell you to
5 the penny what they pay. Others, if you
6 asked them, and they would be just as
7 honest, would state a figure that might
8 be five thousand dollars low or five
9 thousand dollars high, depending on the
10 way they look at life. Some people like
11 to show how much they spend for things,
12 others like to show how thrifty they are.
13 Now, all I am saying is this. We can
14 do it one of two ways, we can have Mr.
15 Entwisle testify to what the conversations
16 were ~~and~~ we can listen to cross examination.
17 Now, if you believe that it is advantageous
18 to your client, and you believe it is
19 advantageous to your client, to make that
20 stipulation on this, let's do it. I think
21 in the long run both sides would be able
22 to make the point that you want to make
23 in this case better if you do.

24 MR. FAHRINGER: Your Honor, what I was going to tell you,
25 Mr. Lyons, who is scheduled to come in

1 this afternoon, is the man at AVM, the
2 Director of Finance, that went over this
3 account with Mr. Dixon, and they marked
4 out the travel and they marked out the
5 personal expenses. What I was hoping
6 would be acceptable to Mr. Stewart and
7 to the Court is that I would stipulate,
8 as far as Mr. Entwisle is concerned, that
9 Mr. Dixon admitted that \$23,000 of this
10 figure, or whatever it is, were personal
11 loans, and I would stipulate that it was
12 not business. What I would like to do,
13 Judge, is this. One, these transactions
14 really go over three years, they start
15 in 1969 and go through 1971, and my concern
16 is sitting down with Mr. Dixon for my own
17 benefit, and I have not as yet done that,
18 and go over each of these figures, because
19 I anticipated, your Honor, with Mr. Lyons
20 some of this might be cleared up, in terms
21 of travel and what was business. He is
22 the man who actually handled that, Judge.
23 THE COURT: We don't have Mr. Lyons, we have Mr.
24 Entwisle.
25 MR. FAHRINGER: I think we could go ahead with Mr. Entwisle,

1 I believe Mr. Lyons is the one who knows
2 this. If I stipulate the \$23,000, he
3 admitted \$23,000 was personal loans, it
4 seems to me that satisfies the Government's
5 needs --

6 THE COURT: You talk to Mr. Stewart, you don't talk
7 to me about that. You talk to him.

8 MR. STEWART: As I understand it, your Honor, we are
9 in issue about \$13,000; a \$9000 item and
10 a \$4000 item. Now, we can eliminate five
11 witnesses in this case by reaching a
12 stipulation as to those items, which I
13 understand are the only ones in issue
14 for 1970. Now, I am willing to give up
15 the business about the swimming pool, the
16 fact that it was stock purchases and home
17 improvements, all that business, which
18 I think is perfectly admissible because
19 it shows a motive, and I am willing to
20 give that up and shorten this case and
21 get on to the jury, but there's got to
22 be give on the other side.

23 THE COURT: The other thing, now, we talked at side
24 bar here about a period of time. You
25 claim, Mr. Fahringer, that this should only

1 be related to 1970. I believe that it
2 cannot be understood here, because the
3 monies were coming in and going out, and
4 on the question of whether or not there
5 was a willful violation or whether this
6 was a misapprehension of the thrust of
7 the regulation, that the only way this
8 can be understood is to start in the
9 beginning, and therefore I would permit
10 testimony if these conversations related,
11 for example, to Mr. Entwisle, year by
12 year, as to what Mr. Dixon told him, well
13 then I think then that I would listen
14 to testimony and jury will hear testimony
15 about what happened year after year.

16 MR. FAHRINGER: Well, Judge, my only concern there is that
17 they don't get into specifics in 1967 or
18 '68. There is no question that loans were
19 being made and they were being reduced
20 down. I made reference to that myself.

21 THE COURT: You think about this and talk to Mr.
22 Stewart about it. We will take a break
23 of fifteen minutes and then come back,
24 and we can proceed in either fashion,
25 either proceed with Mr. Entwisle's

Robert M. Entwisle for Government, Direct.

1 testimony or proceed with the stipulation
2 under the particular ground rules that
3 we have talked about.

4 MR. STEWART: Thank you.

5
6 (The court was in recess at 11:25 A.M.)

7
8 (Proceedings resumed, pursuant to recess,
9 commencing at 11:48 A.M.)

10 (Defendant present, counsel present,
11 jury present.)
12

13 R O B E R T M. E N T W I S L E , called as a witness
14 on behalf of the Government, and having been previously
15 duly sworn, resumed and testified further as follows:

16 DIRECT EXAMINATION BY MR. STEWART: (Cont'd.)

17 Q. Mr. Entwisle, you have indicated that in the fall of
18 1972 that you had a conversation with Mr. Dixon, and
19 he disclosed to you that certain matters in these
20 accounts were loans, is that correct?

21 A. Yes.

22 Q. Now, the individual that you talked to in the fall of
23 1972, and you identified as Mr. Dixon, do you see that
24 gentleman in the courtroom today?

25 A. Yes, I do.

1 Q. Would you point him out?

2 A. Sitting behind Mr. Fahringer.

3 MR. STEWART: For the record, indicating the defendant.

4 BY MR. STEWART:

5 Q. Now, did you have more than one meeting with Mr. Dixon
6 in discussing these and reviewing these accounts?

7 A. Yes, sir.

8 Q. And did you at any time during any of these meetings,
9 which occurred in the fall of 1972, have occasion to
10 ask Mr. Dixon as to what, if any, professional advice
11 he had received with respect to the disclosure require-
12 ments?

13 A. Yes, sir.

14 Q. Would you tell us, please, what he said?

15 A. Mr. Dixon said that he had had no professional advice
16 on the matter from Ernst & Ernst, that his understand-
17 ing of the rule started way back, and that it had been
18 told to him by Mr. Lewis or Mr. Lyons, he could not
19 remember which. This is what Mr. Dixon told me on
20 the 15th of January 1973, following his indictment.

21 Q. Now, sir, was there ever an occasion between 1966 and
22 1972 when you went to the AVM Corporation in Jamestown
23 and reviewed the books yourself?

24 A. As I have indicated earlier, Mr. Stewart, I had caused
25 to be pulled together the travel advance. 2510 accounts,

1 for all officers of the Company, including Mr. Dixon,
2 Jr., for all years from April 1, 1964 down to October
3 of 1972.

4 Q. That was --

5 THE COURT: Excuse me, Mr. Entwisle, when did you
6 do that?

7 THE WITNESS: That was commenced -- the order was given,
8 to the best of my recollection, sometime
9 after September 12, 1972, and the inform-
10 ation came in hand finally on October 18,
11 1972.

12 BY MR. STEWART:

13 Q. Prior to September had you ever gone to the office and
14 examined the books yourself?

15 A. No, sir.

16 Q. And in order to have ascertained the existence of these
17 accounts from the books, what would have been involved?

18 A. I asked for copies of the 2510 accounts from the books
19 of the Company, and they were finally delivered to me,
20 that was in September.

21 THE COURT: That was in September of '72?

22 THE WITNESS: Yes, sir.

23 BY MR. STEWART:

24 Q. What I am asking --

25 THE COURT: The question is what steps did you --

1 THE WITNESS: I don't understand the question.

2 BY MR. STEWART:

3 Q. The feasibility --

4 THE COURT: We are getting into a lot of speculation.
5 He didn't look at the accounts before, and
6 we have his prior testimony about what his
7 duties and obligations were, and how they
8 split up the work, Ernst & Ernst and
9 Mr. Entwisle.

10 MR. STEWART: Yes, sir.

11 BY MR. STEWART:

12 Q. Mr. Entwisle, can you tell us, please, as a member
13 of the board of directors from 1964 on, what if any
14 action would have been taken or would have flowed from
15 disclosing the existence of loans during the year 1970
16 to an officer of the Corporation?

17 MR. FAHRINGER: I object to that, if the Court please.

18 THE COURT: I will sustain the objection. It is
19 completely speculative, ladies and gentlemen,
20 and you should disregard the question.
21 What would have happened, certainly I don't
22 think anyone can say.

23 BY MR. STEWART:

24 Q. All right, sir. I show you an item which is Government's
25 premarked Exhibit 76, and I am referring now specifically

1 to page 3 of that document, Paragraph 1, which reads:
2 "The failure to report these loans to the president
3 and in two years to the late chairman of the board --
4 strike that. The second sentence of that, "The Company
5 has been advised by the officers responsible for the
6 preparation of the proxy statement and the annual report
7 that for the loans and repayments thereof that they had
8 acted in the belief that they were complying with the
9 regulations of law." Would you tell us, please, are
10 you familiar with that statement in that particular
11 document?

12 A. Yes, indeed I am.

13 Q. And upon whom did you rely in making that particular
14 statement in that document?

15 A. A number of people because a number of people at the
16 Company were involved in connection with the proxy
17 statement and the 10-K.

18 Q. All right, sir. With respect to the proxy statement,
19 can you tell us who you relied upon?

20 A. I interviewed Mr. Dixon, Mr. Lewis, particularly with
21 respect to the proxy statement. I interviewed Mr.
22 Hammond, Mr. Lyons with respect to the 10-K and also
23 with respect to the proxy statement.

24 MR. STEWART: May I have just a moment, your Honor?

25 THE COURT: Yes.

1 BY MR. STEWART:

2 Q. What is the title of that particular document that is
3 in front of you, Government's Exhibit 77, I believe?

4 A. It is entitled Special Report to the Shareholders.

5 Q. When was that mailed out?

6 A. It bears date of January 17, 1973.

7 Q. All right, sir. And was that complied at the direction
8 of the Securities & Exchange Commission?

9 A. At the time the Company -- trading in the Company's
10 stock had been suspended by the Securities & Exchange
11 Commission, and the enforcement --

12 MR. FAHRINGER: I object to that, if it please your Honor.

13 THE COURT: I will sustain the objection.

14 MR. FAHRINGER: May I have an instruction on that to the
15 jury, your Honor?

16 THE COURT: Well, as before, ladies and gentlemen,
17 when we have part of an answer and I sustain
18 an objection, you should not consider the
19 question or the answer. That is my ruling
20 here. Do not consider the question or
21 answer.

22 MR. STEWART: All right, sir. I have nothing further.

23

24 CROSS EXAMINATION BY MR. FAHRINGER:

25 Q. Mr. Entwisle, how long have you been admitted to the

1 practice of law?

2 A. Thirty odd years, sir.

3 Q. All right. And I take it that you have practiced most
4 of your life in the field of corporate law?

5 A. Closely held corporation corporate law, principally,
6 until I came on board with AVM in April of 1964, some
7 public experience prior to that but not a great deal.

8 Q. When you got into representing AVM as their general
9 counsel, I take it it was necessary for you, Mr.
10 Entwisle, to familiarize yourself with the SEC
11 regulations?

12 A. Yes, sir.

13 Q. And are they rather extensive?

14 A. What regulations do you address yourself to, sir?

15 Q. The whole body of SEC regulations.

16 A. Yes, they are extensive.

17 Q. All right. As a matter of fact, do they fill up about
18 six volumes of what we call CC8's, the service that
19 contains all those regulations?

20 A. Basically, there is a 1933 statute, a 1934 statute
21 and regulations that flow from it, and they do consume
22 four or five volumes, yes, sir.

23 Q. All right. When we are talking about four or five
24 volumes, and please indulge me, we are talking about
25 volumes that have the looseleaf -- or inside looseleaf

1 binders that can be three or four inches thick on the
2 back?

3 A. That is right.

4 Q. Incidentally, Mr. Entwisle, were you at one time an
5 assistant district attorney or prosecutor?

6 A. I was a State Deputy Attorney General at one time in
7 my career, yes, sir.

8 Q. All right. And that would be in Pennsylvania, I take
9 it?

10 A. In Pennsylvania.

11 Q. All right. And as a State Deputy Attorney General did
12 that put you in the category of law enforcement to
13 some degree?

14 A. Yes, indeed, sir.

15 Q. Now, concerning the proxy regulations, the regulations
16 that relate to proxies, are they quite extensive, that
17 is to say, the filing the proxy statements or the
18 sending out of proxy statements?

19 A. The regulations governing the solicitation of proxies
20 are embraced in the Commission's rules and regulations
21 and they are fairly extensive.

22 Q. Do they fill up pretty much one whole volume?

23 A. Mr. Fahringer, the rules themselves would not take a
24 volume, but the commentary on the rules by the legal
25 writers, and so on, would -- added to it -- would take

1 up a volume, yes, sir.

2 Q. Thank you. Now, incidentally, did you draw Mr. Dixon's
3 will some time ago?

4 A. Yes, long before either he or I had any connection with
5 AVM Corporation.

6 Q. Okay. Now, did you, as a result of your work up in
7 this area representing AVM, familiarize yourself at
8 all with some of the New York State law that governs
9 corporations?

10 A. Yes, sir.

11 Q. All right. And may I ask you, are the board of directors
12 the governing body of a corporation in New York State?

13 A. Subject to the rule of the stockholders, yes, sir.

14 Q. Do you know that a director has a right to examine
15 the books of a corporation?

16 A. Yes, sir.

17 Q. May I ask you this, Mr. Entwisle, in your work after
18 you became general counsel for AVM, did you know that
19 Mr. Dixon traveled quite a bit?

20 A. Yes, sir.

21 Q. Do you know that in 1970, for instance, do you recall
22 his losing his voice and having to go to the hospital?

23 A. I don't recall the year, Mr. Fahringer, but I do recall
24 the condition and the loss of voice and having to go
25 to the hospital, yes, sir.

1 Q. Do you know whether he went to the Cleveland Clinic?

2 A. Yes, I believe he did.

3 Q. Was he operated on out there?

4 A. I believe he was.

5 Q. All right. Now, there has been some talk about a
6 Mr. Drabig, that was a lawyer who worked right there
7 at AVM in Jamestown, did you get to meet him?

8 A. Yes, sir.

9 Q. And as a result of your being general counsel for AVM,
10 did you learn what his duties were, at least generally,
11 with AVM?

12 A. Oh, yes, I was familiar with his general duties.

13 Q. Were those duties that he handled routine things within
14 the Company, such as contracts they may have and claims
15 they may have against them?

16 A. In the main I would say yes, sir.

17 Q. All right. He didn't specialize in SEC work, did he,
18 as far as you know?

19 A. As far as I know, Mr. Fahringer, he did not.

20 Q. All right. Now, I take it you assumed the responsibility
21 as general counsel for AVM in at least initiating the
22 preparation of the proxy statement, is that so?

23 A. That is correct, as I have already testified.

24 Q. Right. And if I understand that testimony, what you
25 would do is you would put together a first draft in

1 Pittsburgh, isn't that so?

2 A. That is correct. Sometimes in Jamestown.

3 Q. You came to the plant -- I meant to ask you about
4 that -- I take it from time to time you came to James-
5 town?

6 A. Yes, indeed, sir.

7 Q. May I ask you, say in a year's time would you be in
8 the Jamestown plant -- you tell me how many times would
9 you come?

10 A. It is hard, it would vary from year to year. I certain-
11 ly would be up there ten, twelve or more times a year.

12 Q. All right. And so there would be times when you would
13 sit down with him in person and talk about the initial
14 draft, and there would be other occasions when you would
15 do it over the telephone, I take it?

16 A. That is right.

17 Q. Now, you would advise him of the information you needed
18 and relied upon him to supply you that information?

19 A. Who is "him"?

20 Q. I'm sorry, I beg your pardon, Mr. Lewis.

21 A. Can I have the question again?

22 (Thereupon the reporter read the last
23 question.)

24 THE WITNESS: Mr. Fahringer, what year are you addressing
25 yourself to?

1 BY MR. FAHRINGER:

2 Q. Any year.

3 A. Well, normally, my first draft, as best I could,
4 called for responses which would comply with the
5 proxy rules. Mr. Lewis was expected to give me the
6 facts and the input necessary to make it a complete
7 document, either verbally or in writing.

8 Q. Mr. Entwisle, I would like to be sure of this. You
9 assumed some of the responsibility of indicating
10 to him what information you had to have as a lawyer?

11 A. Oh, yes. We structured the draft that way or attempt-
12 ed to do so.

13 Q. Then what you relied upon him to do is to supply you
14 with that information?

15 A. Yes, sir.

16 Q. Isn't it true that in the instrument in 1970 you
17 requested that he supply you with all transactions
18 between directors and officers of the Company, isn't
19 that so?

20 A. Yes, sir.

21 Q. Isn't it also true, Mr. Entwisle, that the term
22 "transaction", the lay term "transaction" includes
23 loans, doesn't it?

24 A. Yes, sir.

25 Q. Now, in terms of your getting together or talking on

1 the telephone with him or meeting with him, would you
2 have a number of sessions together?

3 A. In 1970 it was mainly done by writings and by tele-
4 phone. As I have previously testified, I think Bill
5 Lewis sent me down five different writing inputs
6 which went into the proxy statement.

7 Q. Showing you Government's Exhibit 77, which I believe
8 consists of the various drafts and correspondence
9 that related to the 1970 proxy, or would you call
10 it the '71 proxy?

11 A. Actually the 1971 proxy statement.

12 Q. Okay.

13 A. For the annual meeting of April 1971.

14 Q. Now, you have indicated to us that you sent a copy
15 to Mr. Dixon?

16 A. Yes, sir.

17 Q. All right. Now, the letter -- the way that was
18 accomplished was the letter was written to Mr. Lewis,
19 secretary-treasurer of AVN Corporation, isn't that
20 so?

21 A. Yes, sir.

22 Q. And then you stated in your letter that you were
23 enclosing the draft of the proxy statement and went
24 into some detail about some of the other meetings
25 and what not, and what you did was you sent a copy

1 of that letter to Mr. Lewis to Mr. Dixon with a copy
2 of the draft?

3 A. That is correct.

4 Q. There was no separate letter to Mr. Dixon for analysis
5 and consideration, was there?

6 A. There didn't need to be.

7 Q. All right. Now, as a matter of fact -- strike that.
8 I wanted to ask you about this PLI course, the
9 Practicing Law Institute course, was that about the
10 time, if you recall, that the rather famous Texas
11 Gulf sulphur case was decided?

12 A. Yes, sir.

13 Q. Would it be fair to say that the main concern with
14 your attendance to that meeting and, as a matter of
15 fact, Mr. Dixon coming along, was to hear about the
16 Texas Gulf sulphur case?

17 A. Are you asking about my concern or Mr. Dixon's
18 concern?

19 Q. Let me ask you this --

20 A. I was interested in all of it, as a lawyer.

21 Q. Was Mr. Dixon interested in the Texas Gulf sulphur
22 case?

23 A. Yes, he was.

24 Q. As a matter of fact, was that a rather -- I don't
25 want to get into the legal aspects of it -- was

1 that an important decision in the whole field of
2 SEC?

3 A. Yes, it was, on disclosure.

4 Q. Now, you have told us you only stayed one day and
5 the second day of the conference was not attended,
6 you all, I take it, left?

7 A. That is correct.

8 Q. And you indicated that at lunch time there was some
9 discussion about some of the proxy rules?

10 A. That is correct.

11 Q. Do you recall specifically whether the particular
12 disclosure requirement concerning loans was discussed?

13 A. I have no memory of that one way or the other, sir.

14 Q. Are there an awful lot of requirements under the
15 proxy rules concerning disclosure?

16 A. Yes, sir.

17 Q. As a matter of fact, isn't it true that some forms
18 of disclosure under the proxy rule have to do with
19 what they call the materiality of the transaction?

20 A. Under the proxy rules there is very little discretion.
21 Under the Form 10 and 10-K it comes more into play,
22 sir.

23 Q. But there is some discretion under the proxy rule?

24 A. If you could give me an example I could help you.

25 Q. Well, let me put the question to you this way, because

1 I'm not sure I know, is there anything that might go
2 into a proxy statement where the guideline would be
3 whether or not it was material to the corporate
4 business that year?

5 A. Yes, sir. There are times in the life of a company
6 when something is known, which is not required by the
7 proxy rules, which in the judgment of counsel is
8 so material that it ought to go in.

9 Q. Now, do you remember an occasion in Washington, D.C.
10 when Mr. Dixon and Mr. Rogavin and you were together?
11 I should refer you specifically to August 9, 1972.

12 A. My diary indicates that the three of us were indeed
13 together in Mr. Rogavin's office at Arnold & Porter
14 that day.

15 Q. Do you know, sir, as a fact that Mr. Dixon's father
16 died on August 10th?

17 A. Yes, sir.

18 Q. Were you involved in the handling of his estate?

19 A. I had written his will, and I was involved in the
20 Pennsylvania end of his estate, although the actual
21 administration of it was in Miami, Florida, sir.

22 Q. Now, do you recall on that occasion Mr. Rogavin taking
23 out the SEC rule that pertained to disclosure of
24 officers' loans on a proxy statement? Do you recall
25 him taking that out and reading it to Mr. Dixon?

1 A. I have no record of that, it could have happened.

2 Q. Do you recall Mr. Dixon saying, "That is the first
3 time I ever heard of that rule."?

4 A. Again, I have no record of it, it could have happened.

5 Q. Now, there came a time in 1972 when you began inter-
6 viewing people at AVM concerning these loan trans-
7 actions?

8 A. Yes, sir.

9 Q. All right. Now, I would like to be sure of all of
10 the people you interviewed. You interviewed Mr.
11 Lewis, didn't you, the secretary-treasurer?

12 A. If I can give it to you just the way it happened, my
13 mind just works better that way, Mr. Fahringer.

14 Q. Go ahead.

15 A. Following Mr. Lewis' second appearance before the
16 grand jury on September 12th, I think it was, Mr.
17 Floyd and Mr. Rogavin and myself interviewed Mr.
18 Lewis, got certain information, and it was then that
19 I ordered Mr. Lewis to pull together all of the
20 advance account records of whatever kind, of all
21 officers back to April 1, 1964 --

22 Q. May I just interrupt you for a second? What I wanted
23 to ask you, did you interview Jack Lyons?

24 A. Not Lyons until -- not Lyons, not until January of
25 1973, after the Company was indicted.

1 Q. Did you interview -- during this period of time did
2 you interview Ken Hammond?

3 A. Yes, I did.

4 Q. Mr. Hammond was a former employee of Ernst & Ernst,
5 wasn't he?

6 A. I have no personal knowledge of that, sir. I under-
7 stand that he was.

8 Q. All right. Then he came to work for AVM?

9 A. Again, I have no personal knowledge of his history.

10 THE COURT: He was an employee of AVM?

11 THE WITNESS: Yes, sir.

12 THE COURT: What did he do, what were his duties?

13 THE WITNESS: He seemed to be an accounting type
14 person, working closely with Mr. Lyons.

15 BY MR. FAHRINGER:

16 Q. Now, did you in that initial interview from Mr.
17 Hammond learn that he misunderstood the SEC rule?

18 A. Mr. Hammond told me that he didn't know there was
19 any SEC rule at all with respect to a proxy statement.

20 Q. But did you also learn from Mr. Hammond, concerning
21 the SEC rule, as far as the 10-K, that he thought it
22 was a \$20,000 year end?

23 A. Yes, sir.

24 Q. Now, did you interview any other people from Ernst &
25 Ernst? Did you have any conversation with any of the

1 other people from Ernst & Ernst?

2 A. No, sir, I did not go outside the Company at that time.

3 Q. All right. Now, when you were interviewing Mr. Lewis,
4 did you have the occasion to ask him when you
5 inquired about transactions, that is to say, when
6 you were preparing the proxy statement, and ask him
7 for all transactions between officers and directors,
8 didn't he consider a loan to be a transaction, did
9 you ask him that question?

10 A. Yes, at a point in time I did ask him that question.

11 Q. Did he indicate to you that he didn't consider a loan
12 in that category?

13 A. Yes, he did indicate that.

14 Q. All right. Now, there came a time, did there not,
15 that you -- well, strike that. There came a time
16 when the board of directors voted to make a report,
17 a special report, to the shareholders, isn't that
18 true?

19 A. Yes, sir.

20 Q. Isn't it true that you, as the attorney, general
21 counsel for AVM, and as a member of the board of
22 directors, you assumed the responsibility for drafting
23 that report?

24 A. With the able assistance of Wilmer, Cutler &
25 Pickering, and M.F. Cohen, and also Marshall Hornblower.

1 THE COURT: Can you explain to us who they are and
2 what they do?

3 THE WITNESS: Wilmer, Cutler & Pickering is a Washington
4 D.C. law firm, and the gentlemen in that
5 firm that I made reference to, Marshall
6 Hornblower and Mannie Cohen, were
7 partners of that firm and worked with
8 me closely in the preparation of the
9 special report to the stockholders.

10 BY MR. FAHRINGER:

11 Q. Do you know how many members are in the firm of
12 Wilmer, Cutler & Pickering?

13 A. No, sir.

14 Q. Would it be close to one hundred?

15 A. No, it might be half that many.

16 Q. Fifty, sixty?

17 A. Could be.

18 Q. Incidentally, is Marshall Hornblower considered an
19 expert on SEC law?

20 A. I would say that Emanuel Cohen is considered the
21 top expert on SEC law in that firm. He is a former
22 member of the Commission.

23 Q. In other words, Mr. Cohen actually sat on the Securities
24 & Exchange Commission at one time?

25 A. Yes, sir.

- 1 Q. Then after leaving there he went into private practice?
- 2 A. Yes.
- 3 Q. These men were consulted, you received their advice
- 4 concerning the preparation of this special report?
- 5 A. I did.
- 6 Q. To the shareholders?
- 7 A. I did.
- 8 Q. Now, at that time, Mr. Entwisle, when this special
- 9 report to the shareholders was prepared, were you
- 10 concerned that everything that was said in that
- 11 report was absolutely accurate and truthful?
- 12 A. To the very best of my ability, yes, sir.
- 13 Q. All right. Now, subsequently, did you prepare and
- 14 file what is called an 8K, if I am using the proper
- 15 terminology, correct me if I haven't.
- 16 A. You speak of an 8K for what month?
- 17 Q. I'm referring to the one that was filed to explain
- 18 the loan transactions to the SEC.
- 19 A. The first 8K that was filed in connection with the
- 20 loans was filed in October of 1972, and was amended,
- 21 I believe, in December of that year, sir.
- 22 Q. Okay.
- 23 THE COURT: Now, Mr. Entwisle, will you for the
- 24 jury and my benefit explain to us
- 25 what the purpose of an 8K is, what does

1 an 8K do?

2 THE WITNESS: I'll try, your Honor. An 8K is supposed
3 to diclose any material event that has
4 occurred in the life of the company in
5 a thirty day period, and it is required
6 to be filed with the Commission the
7 10th day of the following month.

8 BY MR. FAHRINGER:

9 Q. Now, please excuse me, Mr. Entwisle, if you gave
10 part of this answer before, but may I put the ques-
11 tion, is one of the purposes of filing this 8K --
12 in this instance was to explain the omission from
13 the proxy statements and from the previously filed
14 10K's of these loan transactions, at least was that
15 a subject covered in it?

16 A. The subject was covered. The prime purpose was to
17 put the investing public and our stockholders on
18 immediate notice of a material fact.

19 Q. Fine. And in that Form 8K, did you participate in
20 the preparation of that?

21 A. Yes, sir.

22 Q. And did the firm you had engaged in Washington, and
23 particularly the Wilmer, Cutler & Pickering firm,
24 did they participate in it?

25 A. It happened -- not on that 8K, sir. Arnold & Porter

1 another law firm in Washington that I have mentioned
2 worked on it.

3 Q. Incidentally, the firm of Arnold & Porter, do they
4 have people in their firm who are experienced in
5 SEC work?

6 A. Yes, they do.

7 Q. And in that statement filed with the SEC was it
8 stated, "Due to a misunderstanding of the rule, the
9 Company has failed to report publicly outstanding
10 loans to two of its executives."?

11 A. Yes, sir.

12 MR. FAHRINGER: May I have just a moment, your Honor?

13 THE COURT: Surely.

14 BY MR. FAHRINGER:

15 Q. Incidentally, Mr. Entwisle, I don't know whether you
16 can tell us this or not, but we have been using a
17 phrase "at year end," is that an accounting term
18 that is applied to many situations where you must
19 report the figure as it exists at the end of the year?

20 A. If I understand your question, the answer is yes.

21 Q. Okay. I would like, if I may -- if your Honor will
22 be patient with me --

23 THE COURT: I know there's a lot of documents here,
24 Mr. Fahringer.
25

1 BY MR. FAHRINGER:

2 Q. Did you have the occasion to learn as a result, Mr.
3 Entwisle, of either your work on the AVM account --
4 please excuse me -- with your work as general counsel
5 for AVM, did you come to learn of the names and
6 identities and also deal with some of the people
7 with E & E? I mean Ernst & Ernst, of course.

8 A. May I have that question read?

9 (Thereupon the last question was read
10 by reporter.)

11 THE WITNESS: Names and identities, yes. Dealings
12 with them, to some degree, not too much.

13 BY MR. FAHRINGER:

14 Q. Could I ask you this? Did you learn, as general
15 counsel for AVM, of William Fairgreaves?

16 A. Yes.

17 Q. Was he one of the partners of Ernst & Ernst that
18 handled the AVM account?

19 A. Yes, sir.

20 Q. Did you ever have occasion to meet him?

21 A. Oh, yes, sir.

22 Q. Did he use to come out to the Jamestown plant
23 occasionally?

24 A. Mr. Fairgreave -- I used to see Mr. Fairgreave at the
25 annual stockholders meeting in Jamestown. I don't

1 remember seeing him very much at the plant.

2 Q. Okay. How about Mr. Wiggins?

3 A. Mr. Wiggins and I dealt by telephone and correspondence
4 primarily, in connection with the sending in of the
5 financial statements and schedules on the 10-K. I
6 knew Jim Wiggins.

7 Q. What about a Mr. Sam Hale?

8 A. Yes, sir.

9 Q. And a Mr. Reynolds?

10 A. Yes, sir. He seemed to have come aboard later.

11 Q. How about Mr. Colburn?

12 A. I don't really remember him too well. I understand
13 he was part of the staff though.

14 Q. The name was Everett Reynolds, I believe.

15 A. Yes, I remember him.

16 Q. Was it Richard Colburn?

17 A. Yes, sir.

18 Q. All right. Now, the names that I have given to you,
19 to the best of your knowledge, were all employees
20 of Ernst & Ernst or partners of Ernst & Ernst, is
21 that correct?

22 A. Yes.

23 Q. All of them at one time or another worked on the
24 AVM account either in preparing the 10-K or perhaps
25 sometimes conferring with you on the proxy statement.

Robert M. Entwisle for Government, Redirect.

1 as far as the financials are concerned, isn't that
2 so?

3 A. There are no financials in the proxy statement, but
4 certainly I was dealing with them in connection with
5 their input or their delivery to me, and so on, of
6 the financials and the schedules.

7 MR. FAHRINGER: Thank you very much.

8 THE COURT: Mr. Stewart?

9 REDIRECT EXAMINATION BY MR. STEWART:

10 Q. Mr. Entwisle, in connection with the filing of the
11 8K form in October of 1972, I take it that is the
12 form or vehicle that you used to disclose the
13 discovery of the loans?

14 A. With such information as we had on that day, yes, sir.

15 Q. And the statement that "Due to a misunderstanding
16 we had failed to disclose the information before,"
17 was that statement as contained in the report based
18 upon your personal knowledge or did you derive that
19 from a conversation with one or more other persons?

20 A. It was derivative.

21 Q. Was the defendant, Mr. Dixon, one of the persons
22 that you relied upon to provide that particular
23 information?

24 A. Yes, indeed, sir.

25 Q. When Mr. Lewis was asked by you if he considered

1 loans to be a transaction within the meaning of the
2 SEC rules that you were discussing, I believe you
3 testified that his answer was no?

4 A. Yes, sir.

5 Q. And did you ask him what he did then consider the
6 loans to be?

7 A. No, sir, I did not.

8 Q. And with respect to the proxy disclosure requirements,
9 I believe you testified for Mr. Fahringer that they
10 might run to a volume with commentaries, just the
11 disclosure, proxy disclosure part?

12 A. Yes, sir.

13 Q. But does that blue book that you received from the
14 PLI in 1966, the one that you and Mr. Dixon and Mr.
15 Lewis attended, does that blue book contain the
16 disclosure requirements, and particularly the
17 disclosure requirements with respect to loans?

18 A. Yes.

19 MR. FAHRINGER: I object to that, your Honor.

20 THE COURT: Overruled.

21 BY MR. STEWART:

22 Q. You may answer, sir.

23 A. Yes, sir.

24 Q. And with respect to the proxy statement of 1971,
25 did you in fact make disclosure of transactions

1 between AVM and the Mellon Bank?

2 A. Yes, sir. The first draft of the proxy statement,
3 based upon my personal knowledge, contained a
4 transaction paragraph, and did disclose the fact
5 that the Company was borrowing money from the Mellon
6 Bank, and one of our directors, Mr. Hackett, was an
7 officer of Mellon Bank.

8 Q. That was pursuant to the SEC regulations?

9 A. Yes.

10 Q. All right. In your conversations with Mr. Dixon,
11 did you ascertain whether any interest had been
12 paid on any of the loans which he had admitted to
13 you prior to your discussions of 1972?

14 MR. FAHRINGER: I object to that, your Honor.

15 THE COURT: I will sustain the objection.

16 MR. STEWART: May I have just a moment, your Honor?

17 THE COURT. Yes.

18 MR. STEWART: Your Honor, I wonder if I might make
19 an application at the side bar?

20 THE COURT: Yes.

21 (Thereupon the following discussion
22 ensued at the side bar:

23 MR. STEWART: I want to reask the question of what it
24 would have taken to get into these books
25 and to find these accounts. I believe

1 that is permissible. I asked the
2 question before and your Honor sustained
3 an objection. Mr. Fahringer has opened
4 up the area by pointing out that under
5 the New York law the director of a
6 corporation has the right to inspect
7 the books and records. What I propose
8 to elicit from the witness is that it
9 is virtually an impossible task because
10 of the volume --

11 THE COURT:

I can't see these speculative type
12 questions. If you start to ask, 'Could
13 you do that, what would flow from that'
14 it would be never ending. I don't
15 think we ought to get into it.

16 MR. STEWART:

I wanted to renew my application for
17 permission to ask of him what would
18 have happened had the disclosure been
19 made. I proffer to the Court that --

20 THE COURT:

No, absolutely no. What the board of
21 directors would have done -- I mean
22 this is all hind sight, all Monday
23 morning quarterbacking. I think
24 especially Mr. Entwisle, he like any
25 lawyer or accountant, professional

1 person, doctor, I think we can expect
2 that he would say why, we would have
3 done this and this, we would have had
4 immediate disclosure to the SEC, and
5 all the rest of it. I don't think it
6 is fair to speculate.

7 MR. STEWART: My proffer would be that he would say
8 the directors would have ordered him
9 to repay the money immediately and would
10 have prohibited him from borrowing more
11 money. I think that goes to his motive.

12 THE COURT: No.

13 MR. STEWART: All right, sir.

14 (Thereupon the discussion at side bar
15 terminated.)
16

17 RECROSS EXAMINATION BY MR. FAHRINGER:

18 Q. Mr. Entwisle, I don't mean to press this, but when
19 you talked about the one volume, about a volume of
20 proxy regulations and the commentaries, the comment-
21 aries sometimes involve interpretations of the rules
22 or cases that have been decided under the rules,
23 things of that sort?

24 A. Yes, typically. I had in my office a two volume
25 work on all the securities law.

Robert M. Entwisle for Government, Recross.

1 Q. Of course, the commentary is terribly important in
2 some phases to know how the courts have interpreted
3 the rules?

4 A. Yes.

5 Q. The other thing I want to ask you -- this is my
6 last question -- when you prepared that special report
7 to the stockholders back in 1972 -- or 1973, you
8 certainly didn't put anything in that report that
9 you didn't believe to be true, did you?

10 A. We made every effort to make it accurate, sir.

11 MR. FAHRINGER: Thank you.

12 THE COURT: Nothing further? Thank you, Mr.
13 Entwisle.

14 (Witness excused.)

15 THE COURT: Next witness, please.

16 MR. STEWART: May it please the Court, the next witness
17 will not be here until two o'clock.

18 THE COURT: Well, Mr. Stewart, I think that we
19 should have the witnesses here. We
20 will plan to go -- I know you realize
21 that we have a lot of people coming in
22 and out, that is why it is necessary
23 that we take advantage of the Court's
24 time when available -- roughly from ten
25 to a few minutes before one. It seems

1 to me it would be better to take some
2 time up at noon rather than stay longer
3 in the evening. We will now be in
4 recess until two o'clock when we will
5 resume the testimony, and again keep
6 in mind my instructions, do not talk
7 about the case, do not make up your
8 mind about any part of it until you
9 have heard it all. We will now be in
10 recess.

11
12 (Thereupon the court was in recess at
13 12:20 P.M.)
14
15
16

17 * * * * *

18
19 I hereby certify that this record
20 true and accurate transcript of the
21 stenographic notes in this case.

22 *Henry A. Reed*
23 Official Reporter
24 U. S. District Court
25

Proceedings, dated 12-5-75.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

5 -v-

CRIMINAL DOCKET
NO. 1973-31

6 LLOYD DIXON, JR.,

Defendant.

7 * * * * *

8
9
10 Transcript of proceedings of trial held before the HON.
11 JOHN T. CURTIN, United States District Judge, and a Jury, in
12 Part I, United States Court House, Buffalo, New York, resuming
13 at 2:00 P.M., on December 5, 1974.

14
15 APPEARANCES: JOHN T. ELFVIN, United States Attorney,
appearing on behalf of The United States;
16 ROBERT STEWART, Esq., and DENNIS O'KEEFE,
Esq., Attorneys, U.S. Department of Justice,
17 of Counsel.

18 HERALD P. FAHRINGER, Esq., appearing on
19 behalf of the Defendant.
20
21
22
23
24
25

Charge of the Court.

* * * * *

1 provided that they can make rules and
2 regulations which require corporations
3 make certain filings and disclose certain
4 information in proxy solicitations and
5 in forms such as the 10-K form which we
6 have heard about in this case.

7 MR. FAHRINGER:

Exception, your Honor.

8 MR. STEWART:

9 Your Honor, I would ask that you give
10 also this instruction which simply reminds
11 them that their verdict is not to be
12 based upon sympathy and reminds them that
13 we are concerned only with the defendant
14 Dixon here and not with the question of
15 Ernst & Ernst, although it doesn't
16 specifically mention Ernst & Ernst.

17 THE COURT:

18 That is appropriate. Mr. Hassett,
19 could you leave the machine on for a
20 few minutes and then maybe after five
21 minutes we can turn it off.

22 (Jury returns to the courtroom at
23 1:30 p.m.)

24 THE COURT:

25 Ladies and gentlemen of the jury,
I will try to make my charge to you as

1 to the point as possible but there are
2 a number of counts in this indictment,
3 which each must be covered and as you can
4 see from the remarks of counsel and from
5 the exhibits which have been entered into
6 evidence in this case that the charge
7 will take probably a little while longer
8 than usual.

9 There are a few general remarks which
10 I should make to you right in the beginning.
11 First of all, it is your duty when you go
12 to the jury room to deliberate, to
13 consider carefully all of the testimony
14 in this case, all of the exhibits and to
15 make up your mind on these alone. You
16 should call to the attention of your
17 fellow jurors your carefully reasoned
18 opinions about the facts, the testimony,
19 the arguments on both sides, and on the
20 other hand, you should listen to the
21 arguments, the contentions and the sugges-
22 tions of your fellow jurors if reasonably
23 given.

24 If you find that you are in the
25 wrong, you should then not hesitate to

1 change your mind if the arguments placed
2 are reasonable and are carefully considered.
3 If you think that you are in the right,
4 you should conscientiously adhere to the
5 right side as you see it but keep your
6 mind open to continue to listen. Do not
7 close your mind and certainly do not
8 decide this case on any idea of bias or
9 prejudice.

10 This case should be determined not
11 on the question of sympathy for the
12 defendant, on any question of concern
13 about what the sentence may be. It is to
14 be determined on the facts only.

15 There may have been during the
16 summations some remarks about the purpose
17 of the SEC, the purpose of the Congress
18 enacting these laws and briefly stated,
19 I believe that is in order and I am going
20 to say something about it myself, but you
21 may not vote a verdict in this case
22 because you believe that it may be of
23 some assistance to other shareholders and
24 other stockholders and other corporations
25 in other cases or that you feel under the

1 circumstances something ought to be done.

2 This is not a civil proceeding.
3 This is a criminal case in which it is
4 most important that right from the
5 beginning you keep in mind that the
6 defendant is presumed innocent of the
7 charge placed against him. What may be
8 the purpose of the SEC in civil cases and
9 in the duties of corporations may be
10 interesting but in this particular lawsuit
11 we have the additional burden placed upon
12 the Government that before you can vote a
13 verdict of guilty, they must or you must
14 be convinced of the defendant's guilt
15 beyond a reasonable doubt.

16 During this trial we have only had
17 the testimony of, as I recall, two
18 witnesses, Mr. Lewis and Mr. Entwisle.
19 There was some discussion, - we have heard
20 a lot of other names. As Mr. Fahringer
21 and I think correctly stated in his
22 summation, all of these other people, the
23 accountants and other employees, if
24 necessary, would be available to either
25 side in the case. In that, - as far as

Charge of the Court.

1 that is concerned, I will charge you
2 about this further but you should keep in
3 mind that although the witnesses are
4 available to either side, that the
5 defendant has no burden of explaining
6 away; that you are to make up your mind
7 in this case by the evidence produced
8 here by the Government. If you feel that
9 there is a lack of evidence, then it is
10 your obligation to vote a verdict of
11 not guilty.

12 In this case we have the particular
13 counts which we have discussed and have
14 been discussed in the summations. There
15 may have been some hints in the summations
16 and maybe you have had some thoughts in
17 your mind that maybe the corporation, the
18 officers or Mr. Dixon himself did not
19 conduct themselves in a proper way as far
20 as other certain activities were concerned.
21 There was some talk about some money in
22 Mr. Stewart's summation about some \$9,000
23 which we don't know what happened to it,
24 his argument is. I say that is argument
25 only, whatever happened to it. We are

Charge of the Court.

1 not concerned with what happened to the
2 \$9,000. Even if you find from your
3 examination of the evidence in this case
4 and the records that it was not accounted
5 for and may have been improperly disposed
6 of either by Mr. Dixon or someone acting
7 at his behest, that is not the charge
8 here placed against him in this case.
9 We are simply concerned only with these
10 SEC charges and these mail fraud charges
11 and you may, as far as how the money went
12 in and went out and how the other circum-
13 stances surrounding the use of these
14 funds was done, you may consider that in
15 making up your mind as to motive and
16 intent which I will discuss with you in
17 a few minutes, but that is the only way
18 in which these particular things may
19 enter into your deliberations.

20 You must keep in mind that the counts
21 here are different. Count one is a
22 conspiracy. Count two has to do with a
23 particular charge under the SEC laws and
24 regulations. Counts three, four and five
25 have to do with mail fraud statutes and

Charge of the Court.

1 count six has to do with the required
2 filing under the SEC regulations of the
3 10-K form and the rules which apply to
4 each one of these particular counts are
5 different and you should keep in mind their
6 differences and you must make up your
7 mind as to each count separately and your
8 verdict at the end of my charge I will
9 give to you in addition to the exhibits
10 a vote sheet which there you can set forth
11 your unanimous verdict when you have
12 reached it.

13 You will also be given in the jury
14 room a copy of the indictment which will
15 be used as a guide. Keep in mind my prior
16 charge to you that an indictment is not
17 any evidence of any criminal conduct. It
18 is a means of calling to a defendant's
19 attention what he is charged with so that
20 he may prepare his defense.

21 In this case we are concerned with
22 the various regulations of the Securities
23 & Exchange Commission which as a matter
24 of background and information this is a
25 commission which Congress has instituted

1 to supervise the dealings of certain
2 corporations and the dealing in securities
3 throughout the country and they have the
4 power to make certain regulations. It is
5 our job to try to the best of our ability,
6 my job, to charge you on what regulations
7 apply in this particular case and your
8 job to the best of your ability to apply
9 them to the facts and the charges placed
10 here against the defendant.

11 The Securities & Exchange Commission
12 is empowered by Congress to make rules
13 and regulations requiring companies such
14 as AVM Corporation in this case to file
15 certain annual reports with the Securities
16 & Exchange Commission and in this case
17 one of those reports is the 10-K report
18 and furthermore, to make certain rules
19 and regulations concerning how proxies
20 may be solicited, how they are to be
21 prepared and what information the
22 corporation must put on the particular
23 proxies or proxy solicitation forms.

24 I am going to review some of the
25 material that we have talked about before.

Charge of the Court.

1 As you know by now, it is your job
2 to make up your mind on the facts in this
3 case based upon all of the testimony and
4 the exhibits which have been introduced
5 in evidence. There are certain exhibits
6 which have been marked and which will not
7 be marked in evidence and you should not
8 again speculate or guess about what those
9 exhibits will say. You are to make up
10 your mind here upon the facts, upon the
11 testimony from the witnesses and from the
12 exhibits which are in evidence. You may
13 draw, however, such reasonable inferences
14 from the evidence in the case as seem
15 justified in the light of your own
16 experience in life.

17 An inference has been defined as a
18 deduction or conclusion which reason and
19 common sense leads you to draw from facts
20 which have been proven. Any inference
21 which you draw from the evidence must
22 reasonably flow from the evidence and must
23 be based upon facts established by the
24 evidence. You may consider in your
25 deliberation direct testimony. That is,

1 what a particular witness saw or what he
2 heard or the information which is in the
3 documents, in the exhibits in the case.
4 You may also make up your mind based upon
5 circumstantial evidence. That is when
6 certain facts have been proven what may
7 flow from those facts. We do this in our
8 everyday life and you may do the same
9 thing here, if reasonably applied, and if
10 applied under the rules which I give to
11 you.

12 Circumstantial evidence has been
13 defined as where facts are established
14 from which in terms of common experience
15 one may logically infer other facts which
16 are sought to be established. Circumstan-
17 tial evidence if believed is of no less
18 value than direct evidence, for in either
19 case, you must be convinced beyond a
20 reasonable doubt of the guilt of the
21 defendant. However, in judging circum-
22 stantial evidence, if the reasonable
23 inference to be drawn from the evidence
24 leads to two conclusions, one favoring
25 guilt and the other favoring innocence,

1 it is your duty to accept that one which
2 favors innocence.

3 To determine the facts you must first
4 determine the credibility of the witnesses
5 and that is your judgment alone. In order
6 to do this you should carefully scrutinize
7 all of the testimony given and the
8 circumstances under which each witness
9 testified. You may consider every matter
10 in evidence which tends to indicate
11 whether the witness is worthy of belief.
12 You may consider any bias or prejudice
13 demonstrated by a witness or any demonstrated
14 hope of leniency or reward to be gained
15 through his testimony.

16 You should consider the witness'
17 intelligence, motive, state of mind,
18 demeanor and manner while on the stand.
19 You may consider any relation which the
20 witness may have to either side of the
21 case; the manner in which the witness may
22 be affected by the verdict and the extent
23 to which, if at all, each witness is
24 either supported or contradicted by other
25 evidence or other exhibits in the case.

Charge of the Court.

1 The mere fact that the testimony of
2 a witness is inconsistent or that there
3 are discrepancies in his testimony does
4 not mean that you must reject his
5 credibility. You must determine whether
6 the inconsistency or discrepancy is a
7 result of innocent miscalculation or in-
8 accurate observation.

9 In this case you will recall that
10 Mr. Lewis testified under a grant of
11 immunity. That means that he was ordered
12 to testify but in return the law provides
13 that any answers that he gave could not
14 be used against him in any kind of a
15 criminal prosecution. You are entitled
16 to consider this and you should consider
17 his testimony with caution and only
18 consider it with great care. If you
19 believe that this consideration influenced
20 Mr. Lewis one way or another in his
21 testimony, whether it consciously or
22 unconsciously slanted his testimony in
23 any way, then you may discount or disre-
24 gard his testimony to the amount that you
25 feel is appropriate under all of the

Charge of the Court.

1 circumstances.

2 There was some discussion here about
3 what information came to Mr. Lewis. You
4 may consider that against the defendant
5 here only if under all of the circumstances
6 you find that information also came to
7 Mr. Dixon. I will talk to you about this
8 later on in greater detail but Mr. Dixon
9 cannot be convicted upon what other people
10 knew, upon what other people did. He
11 can only be convicted because of what
12 information he had and what actions he
13 took.

14 There are some general rules of law
15 which apply to all criminal cases. One
16 important one which we have discussed
17 before and must be discussed again is that
18 the defendant is presumed to be innocent.
19 That presumption of innocence remains
20 with him throughout the trial and continues
21 to exist until such time as each juror is
22 convinced beyond a reasonable doubt by
23 legal and competent evidence that a
24 defendant is guilty of an offense or
25 offenses charged.

1 The burden of proof that a person is
2 guilty beyond a reasonable doubt rests
3 with the Government at all times. It
4 never shifts to a defendant. In order
5 to sustain its burden, the Government must
6 present proof which is sufficiently strong
7 to convince each juror of a defendant's
8 guilt beyond a reasonable doubt. The
9 requirement that the prosecution prove a
10 defendant's guilt beyond a reasonable
11 doubt extends to every essential element
12 of a crime or crimes charged against a
13 defendant.

14 As I have said to you before, as far
15 as the law is concerned, it is my obliga-
16 tion and your obligation to take it as
17 well as we can as it is set forth in the
18 law and the regulations. You are not to
19 be influenced at all by the fact that the
20 Government of the United States is a party
21 and you are to give the same careful
22 consideration to the arguments of Mr.
23 Fahringer as you do to those of Mr. Stewart.
24 This case should not be decided by the
25 bulk of documents that are in the case.

Charge of the Court.

1 It must be decided by the quality of the
2 evidence as it applies to the particular
3 charge.

4 It is a basic rule in all criminal
5 cases and this follows certainly from the
6 rule of presumption of innocence which I
7 have discussed with you that a defendant
8 is presumed innocent until proven guilty
9 beyond a reasonable doubt. That presump-
10 tion of innocence remains with the
11 defendant throughout the trial and
12 continues to exist until such time as
13 each juror is convinced beyond a reasonable
14 doubt by legal and competent evidence that
15 a defendant is guilty of the offense
16 charged. This burden rests with the
17 Government at all times. It never shifts
18 to the defendant. The Government must
19 prove each element of the crime charged
20 in a particular count beyond a reasonable
21 doubt.

22 You will separately weigh and
23 determine the evidence as to each count
24 in the indictment. You will determine
25 the guilt or innocence of the defendant

Charge of the Court.

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1 as to each count separately.

2 A reasonable doubt is a fair doubt
3 based upon reason and common sense and
4 arising from the evidence. It is rarely
5 possible to prove anything to an absolute
6 certainty. A reasonable doubt is not a
7 vague, speculative or imaginative doubt,
8 but it is such a doubt as would cause
9 prudent men to hesitate before acting in
10 matters of importance to themselves. A
11 defendant is never to be convicted on
12 mere suspicion, conjecture or surmise.

13 Since the burden is upon the
14 prosecution to prove the accused guilty
15 beyond a reasonable doubt, a defendant
16 has the right to rely upon the failure
17 of the prosecution to establish such
18 proof. You should make your judgment
19 upon all the evidence in the case, direct
20 examination, cross examination and all
21 the exhibits. The law does not impose
22 upon the defendant the duty of producing
23 any evidence. A defendant in a court in
24 the United States is under no obligation
25 to give any evidence whatsoever. You

Charge of the Court.

1 will recall that the defendant here
2 elected not to testify as a witness in
3 his own behalf. Under our system, it is
4 Mr. Dixon's right to make such an election.
5 The fact that he did not testify is not
6 to weigh against him in any fashion, nor
7 is this fact even to be considered or
8 discussed by you when you retire to
9 deliberate in the jury room. You should
10 not draw any inferences unfavorable to him
11 whatsoever from the fact that he did not
12 take the stand in this case.

13 As I have explained to you before,
14 it is necessary that before you can vote
15 a verdict on any one of these counts that
16 your verdict be by unanimous vote.

17 In this case, ladies and gentlemen,
18 after I examined the indictment, it seemed
19 to me that just as Mr. Stewart started
20 with count six, I have a different start-
21 ing place. My starting place here is
22 count two. Then I will discuss count
23 six. Then I will discuss counts three,
24 four, and five and finally the conspiracy
25 count, count one, and I hope it will be

1 clear to you when I have finished why
2 I have done this.

3 Basically it is because although in
4 some respects that the counts, the substan-
5 tive counts, counts two through six are
6 similar in some respects, they are
7 different in a very important element and
8 that is the element of specific intent
9 which I will define to you in a few minutes,
10 required for three, four and five and
11 which is an added element not found in
12 counts two and count six. Furthermore,
13 the conspiracy count contains within it
14 some of the elements contained, which I
15 will explain to you in the other counts,
16 and that is essentially conspiracy is the
17 unlawful agreement to commit a crime, so
18 it is different from the others.

19 I will not read for you word by word
20 the various counts. A copy of the indict-
21 ment will be given to you, but I will
22 simply paraphrase them.

23 Count two of the indictment charges
24 that some time between the first of
25 December 1970 and up to May 1st, 1971

Charge of the Court.

1 that the defendant here did knowingly,
2 willfully and unlawfully by the use of
3 mails cause to be solicited proxies in
4 respect to the securities of the AVM
5 Corporation in that the said solicitation
6 was made by means of a proxy statement
7 which omitted and failed to disclose with
8 regard to the said Lloyd Dixon, Jr., an
9 officer of the AVM Corporation, for the
10 fiscal year of 1970 which in the AVM
11 Corporation extended from 1 January, 1970
12 through 31 December, 1970, certain items.

13 Number one, the largest aggregate
14 amount of indebtedness outstanding at
15 anytime during the period. Two, the
16 nature of the indebtedness and of the
17 transactions in which it occurred, and
18 three, the amount of the indebtedness
19 outstanding as of the last practicable
20 date, and four, the rate of interest paid
21 or charged, and this is all in violation
22 of certain sections of Title 15, United
23 States Code.

24 In respect to count two there are
25 certain regulations which I should explain

1 to you in a little bit greater detail.
2 One is Section 78(f)(f) of Title 15
3 which provides in pertinent part as
4 follows: Any person who willfully violates
5 any provision of the Securities & Exchange
6 Law or any rule or regulation thereunder,
7 the violation of which is made unlawful
8 or the observance of which is required
9 under the terms of the law shall be
10 punished in the manner provided by law.

11 In other words, it is a general, -
12 well, we will strike "in other words".

13 In this case it is not contested
14 that the AVM Corporation was between 1965
15 and 1972 a public held corporation which
16 had a class of securities registered with
17 the Securities & Exchange Commission and
18 was therefore subject to the provisions
19 of the Securities & Exchange Commission
20 and of the Securities & Exchange Act.

21 Section 78(n) of Title 15 of the
22 code provides in pertinent part as follows:
23 It shall be unlawful for any person by
24 the use of mails or by any means of
25 interstate commerce in controvention of

1 such rules and regulations as the
2 Commission may prescribe as necessary or
3 appropriate in the public interest or
4 for the protection of investors to
5 solicit any proxy.

6 In other words, whenever mails are
7 used, proxies may be solicited only in
8 accordance with the rules and regulations
9 of the Commission and it is unlawful to
10 solicit proxies in violation of such
11 rules and regulations.

12 The pertinent rules of the Commission
13 which relate to the proxies are found in
14 certain regulations set forth in the
15 code of federal regulations. One of these
16 reads in pertinent part: No solicitation
17 of proxies subject to this regulation
18 shall be made unless each person solicited
19 is concurrently furnished with proxy
20 statement containing the information
21 specified in these rules and regulations.

22 The second regulation which is of
23 importance provides in part that each
24 proxy statement must state as to each of-
25 ficer of the corporation who was indebted

1 to the corporation at anytime since the
2 beginning of the last fiscal year of
3 the corporation, number one, the largest
4 aggregate amount of indebtedness outstand-
5 ing at anytime during the period. Two,
6 the nature of the indebtedness and the
7 transaction of which it was incurred, and
8 three, the amount thereof outstanding as
9 of the latest practicable date, and four,
10 the rate of interest paid or charged
11 thereon.

12 This regulation continues to state
13 it does not apply to any officer whose
14 aggregate indebtedness did not exceed
15 \$10,000 at anytime during the fiscal year.
16 Excluded in the determination of the
17 amount of indebtedness are all amounts
18 due from the officer for purchases subject
19 to usual trade terms for ordinary travel
20 and expense advances and for other trans-
21 actions in the ordinary course of business.

22 In other words, the \$10,000 figure
23 must be loans from the corporation to the
24 officer of the corporation and not money
25 which the officer has spent on behalf of

1 the corporation in the form of ordinary
2 business expense.

3 On count two the Government must
4 prove beyond a reasonable doubt, in order
5 to find the defendant guilty, the
6 following elements: Number one, that AVM
7 Corporation was registered with the
8 Securities & Exchange Commission during
9 1970 and 1971 and was therefore subject
10 to the SEC rules. When I say "SEC" I
11 mean the Securities & Exchange Commission
12 and regulate with respect to the sollicita-
13 tion of proxies from its shareholders.
14 Two, that the defendant Lloyd Dixon, Jr.
15 was president of the corporation during
16 1970 and 1971 and therefore was an officer
17 of the corporation. Thirdly, that sometime
18 between December 1970 and May 1971 proxies
19 were solicited from the AVM stockholders
20 by means of a proxy statement which did
21 not disclose that Mr. Dixon was indebted
22 to the corporation or that he had obtained
23 loans from the corporation or was obliged
24 to pay any interest on any loans. Fourth,
25 that he was indebted to the corporation

1 during 1970, - during 1970, and that his
2 indebtedness exceeded \$10,000 at some
3 time between January 1st and December 31st
4 1970, and this indebtedness was a personal
5 loan and not a business expense, and
6 fifth, that Mr. Dixon sometime during
7 this period knowingly and willfully caused
8 the mails or some other means of interstate
9 commerce to be used to distribute proxy
10 statements which improperly omitted and
11 failed to disclose the true facts about
12 Dixon's indebtedness to the AVM Corporation.

13 In determining whether the defendant
14 acted knowingly and willfully you should
15 consider the testimony regarding advice
16 from accountants and lawyers. I will
17 explain to you in detail in a few minutes
18 how you are to determine the question of
19 willful and knowingly under count two and
20 count six because as to those counts,
21 the burden on the Government is similar.

22 To review briefly count two, the
23 Government must prove beyond a reasonable
24 doubt that the AVM Corporation was under
25 the jurisdiction and subject to the rules

Charge of the Court.

1 and regulations of the SEC; that Mr.
2 Dixon was the president during the period
3 in question; that during this period that
4 proxies were solicited by the corporation
5 by the, - from various stockholders and
6 during this period of time that Mr. Dixon
7 was indebted to the corporation in a sum
8 exceeding \$10,000 and that this sum was
9 a personal loan and not a business
10 expense and that the proxy solicitation
11 was carried out by use of the mails and
12 that it failed to disclose the true facts
13 about Mr. Dixon's indebtedness to the
14 AVM Corporation, and that the acts on the
15 part of Mr. Dixon, that he was the one
16 who acted and he acted willfully and
17 knowingly under all of the circumstances.

18 Count six is the briefest charge in
19 this indictment and leaving out the
20 various references to the regulation
21 numbers it states, charges that on or
22 about March 31st, 1971 that the defendant,
23 and in this case it does here, it also
24 charges the corporation, but we are only
25 concerned, - we are not concerned with

1 what the corporation did or what happened
2 to the corporation. We are only concerned
3 with Mr. Dixon's acts; that Mr. Dixon
4 unlawfully, willfully and knowingly
5 violated certain rules and regulations
6 under certain chapters and regulations and
7 in that he caused to be filed or filed
8 with the Securities & Exchange Commission
9 financial statements and an annual report
10 on Form 10-K which omitted to include a
11 Schedule 2.

12 In this particular count it is
13 obvious that this has to do with a
14 different form, a different filing. It
15 has to do with the filing of what has
16 been referred to as a 10-K form and you
17 will recall the testimony of Mr. Entwisle
18 and the others about the purpose of the
19 form. The form is in evidence and it
20 is there for your examination.

21 In this particular count, you recall
22 that I have already told you that Section
23 78(f)(f) makes it unlawful for any person
24 to violate the provisions of the SEC Act
25 or that, furthermore, it makes it unlawful

1 for any person to willfully and knowingly
2 make or cause to be made any statement in
3 any report or document required to be
4 filed under law which statement is false
5 or misleading with respect to any material
6 fact.

7 Form 10-K is a report which publicly
8 traded companies such as AVM was, which
9 they are required to file with the SEC
10 annually. The purpose of the 10-K report
11 is to disclose to any current or potential
12 investor current financial data about the
13 company and other important information
14 about the company and management including
15 transactions entered into between the
16 company and its management.

17 Section 78(n) of the law provides in
18 part that every corporation such as the
19 AVM Corporation in accordance with the
20 rules which the Commission may prescribe
21 for the proper protection of investors,
22 that they must file such annual reports
23 as the Commission may prescribe.

24 The regulations require that these
25 reports shall be made on an annual basis.

Charge of the Court.

1 Another regulation specifies that
2 schedules are to be filed with the 10-K
3 form. One of those specified is the
4 so-called Schedule 2 which requires
5 disclosure of, among other things, amounts
6 due from officers of the corporation.
7 This section goes on to say that the
8 Schedule 2 shall include, one, the name
9 of the officer who owes the company a
10 debt; two, the amount owing at the begin-
11 ning of the fiscal year; three, any
12 addition to the debt during the year;
13 four, any reduction of the debt, and
14 five, the amount owed at the close of the
15 fiscal year. This rule applies to any
16 corporate officer from whom an aggregate
17 indebtedness of more than \$20,000 at any-
18 time during the period for which related
19 profit and loss statements are filed was
20 owed.

21 Now, it is clear that that is one
22 difference between count two and count
23 six, ten thousand and twenty thousand
24 dollars, and the kind of form it is and
25 how it must be filed certainly are other

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1 differences which you should take into
2 account, and the \$20,000 figure applies
3 to count six and the \$10,000 figure applies
4 to counts one, two, three, four and five.

5 We have heard about the year-end
6 discussion but it is the law. It is
7 important for you to keep in mind that
8 we are not concerned here with year-end
9 requirements but the law provided that
10 the disclosure must be made for the
11 amounts due, the amounts of indebtedness
12 to the corporation by the officer, in
13 this case, Lloyd Dixon, Jr., at any point
14 during the year in question.

15 Count six in the indictment, therefore,
16 to summarize it all, you must be satisfied
17 beyond a reasonable doubt of the following:
18 One, that during 1970 AVM was a public
19 corporation subject to the rules and
20 regulations of the SEC and was under the
21 rules and regulations required to file
22 a 10-K annual report.

23 Secondly, that the defendant Lloyd
24 Dixon was an officer of the corporation
25 during the year.

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1 Thirdly, that the defendant had
2 personal loans from the corporation and
3 that those loans exceeded \$20,000 at any
4 point in time or at some point in time
5 during the year 1970.

6 Fourth, that the corporation was
7 required to file a Schedule 2 with the
8 10-K form disclosing the existence of these
9 loans and all pertinent facts relating
10 to the loans.

11 Fifth, that the corporation did not
12 file such a Schedule 2 for the fiscal year
13 ending December 31, 1970. Again you have
14 the 10-K form there which shows when it
15 is filed and you have the testimony of
16 Mr. Entwisle who explained to you the
17 filing and Mr. Lewis what filing was made.

18 Sixth, ~~that~~ the defendant Lloyd Dixon,
19 Jr. as president and chief executive
20 officer of the corporation willfully and
21 knowingly caused a Schedule 2 not to be
22 filed contrary to the rules and regulations
23 of the Securities & Exchange Commission.

24 In connection with count two and
25 count six I have talked about willfully

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1 and knowingly and in this regard you
2 should keep in mind the following:

3 An act is done knowingly if done
4 voluntarily and intentionally and not
5 because of a mistake or accident or other
6 innocent reason. An act is done willfully
7 if done intentionally and deliberately.

8 In this case the defendant claims
9 that he is not guilty of knowing and
10 willful wrongdoing because he acted on
11 the basis of advice from his attorney and
12 accountants. If the defendant sought
13 advice of attorneys and accountants whom
14 he considered competent and under the
15 circumstances a reasonable person would
16 find that they were competent and before
17 he took any action he made a full and
18 active report to them of all the material
19 facts of which he reasonably should have
20 had knowledge and he acted in good faith
21 for the purpose of securing advice on
22 the lawfulness of his conduct and he
23 acted strictly in accordance with the
24 advice received from the attorney or from
25 the accountant which was given to him

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1 following this report, then the defendant
2 would not be willfully doing wrong in some
3 action he took or some action that he
4 failed to take which the law required to
5 be done. Whether the defendant acted in
6 good faith, whether he gave his attorneys
7 or his accountants all of the information
8 he should have given them under the
9 circumstances, whether he made a complete
10 and full report to them of the information
11 he should have made available and whether
12 he acted in accordance with the advice
13 received are questions for you to determine.

14 To determine whether or not under
15 all of the circumstances the defendant
16 acted willfully and knowingly, you should
17 consider carefully all of his conduct
18 under the circumstances; the activities
19 of others; his experience in corporate
20 affairs; the duties and responsibilities
21 placed upon him by being president of a
22 corporation such as the AVM Corporation.

23 The meaning of a particular act or
24 failure to act may depend upon circumstances
25 surrounding the act.

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1 To repeat, the word "knowingly"
2 means that the defendant must be aware of
3 what he was doing and what he was not
4 doing. The word "willfully" under
5 counts two and count six means that the
6 defendant acted deliberately and inten-
7 tionally and his acts, statements or
8 omissions were not the result of innocent
9 mistake, negligence or inadvertence or
10 other innocent conduct.

11 On the other hand, there was no
12 obligation on the part of the prosecution
13 to prove motive on the part of the
14 defendant. You may, however, as a practical
15 matter consider motive to determine whether
16 or not the defendant acted willfully and
17 knowingly or was simply careless. For
18 that reason you may consider motive or
19 lack of motive in determining a defendant's
20 intentions or his knowledge.

21 Intent and knowledge may be inferred
22 from a defendant's conduct, his acts,
23 his statements and all of the surrounding
24 circumstances. As I have already said
25 to you, you may take into account his

1 educational background, his experience
2 in financial affairs, the extent of his
3 participation in corporate transactions.

4 Generally speaking, ignorance of the
5 law or regulations is no defense. It is
6 not necessary for the prosecution to
7 prove that the defendant knew that a
8 particular act or failure to act was a
9 violation of the law.

10 Unless and until outweighed by
11 evidence in the case to the contrary the
12 presumption is that every person knows
13 what the law forbids and what the law
14 requires to be done. However, evidence
15 that the accused acted or failed to act
16 because of ignorance of the law is to be
17 considered by you in determining whether
18 or not the accused acted or failed to
19 act with the intent as charged.

20 To make up your mind about this,
21 about whether or not his actions were
22 taken in ignorance of the law you may
23 consider all of the evidence in the case;
24 the types of regulations we had here;
25 the meetings which Mr. Dixon had with his

1 attorneys and his accountants; his atten-
2 dance at various lectures about the
3 regulations.

4 On the one hand, the defendant argues
5 that shows good faith. On the other
6 hand, the Government argues that shows
7 knowledge of the particular regulation.

8 You are entitled to consider his
9 responsibilities and duties as president
10 of a corporation such as the AVM Corporation
11 which he is bound to know is subject to
12 certain rules and regulations of the SEC.
13 If you find that he was aware of the
14 existence of the regulation, his mistaken
15 belief or hope that the regulation did not
16 forbid the precise kind of conduct in
17 which he engaged will not serve as a
18 defense. He may not deliberately close
19 his eyes to the regulations.

20 It is up to you to determine what
21 information came to him about the specific
22 details of the SEC regulations. Negligence,
23 mistake and inadvertence as I have already
24 explained to you may excuse his conduct
25 only if he acted in good faith, gave the

1 attorneys and the accountants all of the
2 information he should have under the
3 circumstances and followed their instruc-
4 tions as well as he was able, but as
5 president of a corporation subject to
6 rules and regulations of the SEC he cannot
7 insulate himself from criminal liability.
8 He cannot turn his back upon rules and
9 regulations which he is required to be
10 aware of.

11 He must give his advisors all of the
12 information that he should have under the
13 circumstances, under the circumstances,
14 that is, of a person like himself in a
15 position as president of a corporation.
16 He has an affirmative duty to insure to
17 the best of his ability that he follow
18 the course that I have just described to
19 you.

20 If you find under all of the circum-
21 stances that his acts constituted reckless,
22 indifferent disregard for his duty, the
23 law entitles you to infer that he acted
24 willfully and knowingly.

25 Counts three, four and five are

1 different from counts two and six in
2 several respects. These are mail fraud
3 counts and are brought under a different
4 and separate statute.

5 In these counts it is charged that
6 he caused the mails to be used in order
7 to receive proxies which had been signed
8 by the stockholders.

9 There is also a difference which I
10 will explain to you in a moment concerning
11 the burden of proof on the Government to
12 prove not only that the acts were done
13 willfully and knowingly, but were done
14 with specific intent on his part to
15 disregard or to disobey the law.

16 In this particular, - in these counts,
17 counts three, four and five are similar
18 except the dates involved are different
19 and they relate to the proxy solicitations
20 and the proxies sent in by Mr. Maul,
21 Mrs. Maul and Mr. Fynn. In this case the
22 charge is that Mr. Dixon devised a scheme
23 to defraud by the use of mails and the
24 charge continues to deny the SEC informa-
25 tion to which the Commission was lawfully

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1 entitled and solicited and caused to be
2 solicited proxies in respect to securities
3 of the AVM Corporation. It is charged
4 that the solicitation was made by means
5 of a statement which omitted and failed
6 to disclose for the year 1970 the informa-
7 tion which we have already described to
8 you under the other count.. That is, the
9 largest amount of indebtedness outstanding
10 at anytime during the fiscal year of
11 Mr. Dixon as an officer of the corporation,
12 and it is charged in this count that it
13 was carried out by the use of the mails
14 by falsely, - that they took and received
15 from the United States Postal Service the
16 falsely solicited proxies.

17 These counts, three, four and five
18 are all similar. The dates involved are
19 the only differences between them. Each
20 count should be taken and considered
21 separately.

22 The part of the mail fraud section
23 which is appropriate here reads as follows:
24 Whoever having devised or intending to
25 devise any scheme or artifice to defraud

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1 for the purpose of executing such scheme
2 or artifice or attempting to do so takes
3 or receives from any post office any
4 mail matter delivered by the postal
5 service shall be punished in the manner
6 provided by law.

7 It is charged in the indictment in
8 this case that the scheme was to defraud
9 the stockholders of AVM Corporation by
10 making false and fraudulent entries in
11 the books and records in order that
12 information required by the Securities &
13 Exchange Commission about corporate loans
14 to Mr. Dixon would not be available to the
15 stockholders in exercising their proxies.
16 These counts are concerned with receipt
17 in the mails of specific proxies, the
18 receipt of which was part of an alleged
19 scheme to defraud and mislead the stock-
20 holders.

21 The indictment alleges that the
22 essence of the fraudulent scheme was that
23 Mr. Dixon denied the SEC and the stock-
24 holders information about corporate loans
25 to himself and that they were entitled to

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1 such information by law for the purpose
2 of exercising proxies on an intelligent
3 and informed basis.

4 It is further necessary to sustain
5 a conviction under the mail fraud counts
6 to prove that Mr. Dixon, - or I should
7 put it around the other way, - it is
8 important to emphasize that under these
9 counts Mr. Dixon cannot be found guilty
10 unless you determine that he had actual
11 knowledge of the misleading or false
12 nature of the proxy mailings and that he
13 specifically intended to violate the mail
14 fraud statute. In this respect you should
15 keep in mind that the Government must
16 establish the following beyond a reasonable
17 doubt.

18 One, that the AVM Corporation was
19 registered with the SEC during 1970 and
20 1971 and subject to the rules and regula-
21 tions.

22 Two, that the defendant Lloyd Dixon,
23 Jr. was president during the period in
24 question and an officer of the corporation.

25 Three, that from December 1970 until

1 May of 1971 proxies were solicited from
2 AVM stockholders and that they were
3 furnished with a proxy statement which
4 did not disclose that the defendant was
5 indebted to the corporation or that he
6 had obtained loans from the corporation
7 or was obliged to pay interest on any
8 loans.

9 Fourth, the Government must prove
10 that the defendant was indebted to the
11 corporation during the year 1970 and the
12 indebtedness was for personal loans which
13 exceeded the sum of \$10,000 at some point
14 in this particular period.

15 Fifth, that the defendant knowingly
16 and willfully caused solicitation of
17 proxies using a proxy statement which he
18 knew failed to make the required and
19 necessary disclosures about the loans
20 and the defendant as the president intended
21 to deceive the stockholders into exercising
22 their proxies under false and fraudulent
23 pretenses, thereby defrauding them with
24 respect to withholding material and
25 necessary information which was essential

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1 for them to make, - for them to make a
2 reasonable and sound assessment of the
3 qualifications of the defendant to continue
4 to serve as president.

5 Sixth, that for purpose of executing
6 this scheme the defendant took and received
7 from the mail certain falsely solicited
8 proxies on or about three specific dates,
9 namely, March 20th, March 22nd and April
10 1st 1971.

11 There are certain general considera-
12 tions which you should keep in mind concern-
13 ing the mail fraud sections. Firstly,
14 it is the substance of the offense charged
15 in these counts that it is the willful
16 misuse of the mails in carrying out or
17 attempting to carry out a scheme to
18 defraud as charged and not the scheme
19 itself, so the success or failure of the
20 scheme is immaterial and it is not
21 necessary to prove that any person was in
22 fact defrauded.

23 The use of the United States mails
24 in furtherance of a scheme to defraud is
25 an essential element of the offense

1 charged. It is not necessary that the
2 use of the mails by the participants
3 themselves be contemplated or that the
4 defendant do any actual mailing or specif-
5 ically intend that the mails be used. It
6 is sufficient if the mails were in fact
7 used to carry out the scheme and that the
8 use of the mails by a participant or by
9 somebody else was reasonably foreseeable.
10 Under the mail fraud statute each separate
11 use of the mails in furtherance of the
12 scheme to defraud constitutes a separate
13 offense.

14 The Government is not required to
15 show that the victim has suffered actual
16 monetary or property loss. A victim may
17 be defrauded within the meaning of the law
18 even though he has not suffered a financial
19 loss.

20 One who holds a position of trust
21 such as the president of a large corpora-
22 tion, and it is up to you to determine
23 whether or not that is the case here, -
24 utilizes any scheme to obtain improper
25 advantage, the persons to whom he owes

1 his duties as trustee are therefore
2 defrauded of his honest and faithful
3 services.

4 The mail fraud statute prohibits not
5 simply schemes to defraud people of money
6 and tangible items, but it equally
7 protects against schemes to defraud per-
8 sons of intangible rights such as honest
9 and faithful services from persons in
10 positions of trust.

11 In these counts, counts three, four
12 and five, it is important that you under-
13 stand that the intent necessary to sustain
14 a guilty verdict is different from the
15 intent necessary to sustain a guilty
16 verdict on counts two and six which only
17 relate to violations of the SEC rules and
18 regulations. Under the counts two and
19 six proof of specific intent to violate
20 the law is not necessary to uphold a
21 guilty verdict provided that there is
22 proof beyond a reasonable doubt that the
23 defendant knowingly and willfully committed
24 the act prohibited as I have charged that
25 to you.

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1 However, in considering the mail
2 fraud counts it is necessary that the
3 evidence in the case establish beyond a
4 reasonable doubt that the proxy sollicita-
5 tion was willfully mailed or caused to be
6 mailed by the defendant with the intent
7 to help carry out some essential step in
8 the execution of the scheme alleged in
9 the indictment.

10 To act with intent to defraud means
11 to act knowingly and with a specific
12 intent to deceive for the purpose of
13 either causing some financial loss to
14 another or bring about some financial
15 gain to one's self. It is most important
16 that you keep these differences in mind.
17 The burden, I think it is clear that the
18 burden under three, four and five as
19 far as the proof of specific intent, is
20 much heavier than the burden under two
21 and six.

22 The indictment in this case also
23 charges, - the indictment under counts
24 two through six also charge violations
25 of Section 2 of Title 18. That section

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1 provides that whoever willfully causes
2 an act to be done, which is directly
3 performed by him or another would be an
4 offense against the United States, is
5 punishable as if he did the act himself.
6 This is known as being an aider or abettor.

7 Generally speaking, in order to aid
8 and abet another to commit a crime it is
9 necessary that the accused willfully
10 associate himself in some way with the
11 criminal venture and willfully participated
12 in it as he would in something he wishes
13 to bring about. That is to say he
14 willfully seeks by some act or omission
15 of his to make the criminal venture
16 succeed.

17 In this regard you should note that
18 there has been evidence that the defendant
19 was president or chief executive officer
20 of this corporation from about 1964 until
21 1973.

22 As I have already charged you, that
23 more is expected and required of a
24 president of a corporation in the way of
25 reasonable investigation than can

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1 reasonably be expected of a lesser official.

2 We turn to count one in the indict-
3 ment which is the conspiracy count. I am
4 not going to read this to you. It will
5 be there for your perusal in the jury
6 room. I will briefly summarize it in a
7 minute or two but first of all, I think
8 that we should consider what a conspiracy
9 is in general terms.

10 Conspiracy is an agreement by two
11 or more persons to accomplish some unlaw-
12 ful purpose. Each member of a conspiracy
13 becomes the agent of every other member.
14 The agreement does not have to be in
15 writing and the evidence need not show
16 that the members entered into any express
17 or formal agreement or that they directly
18 by words spoken or in writing stated
19 between themselves what their object or
20 purpose was or what the details would be.

21 However, the evidence must show that
22 the members in some way positively or
23 tacitly came to a mutual understanding to
24 try to accomplish a common unlawful plan.
25 However, mere association or similarity

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1 of conduct and the fact that the defendants
2 may have known each other and may have
3 assembled together does not necessarily
4 establish proof of the existence of a
5 conspiracy. Before you can find that the
6 defendant had become a member of the
7 conspiracy, the evidence must show that
8 the conspiracy was formed and that the
9 defendant knowingly had knowledge of the
10 purpose of the plan and willfully participated
11 in it with the intent to advance the object
12 of the conspiracy.

13 Again, to participate knowingly and
14 willfully means to participate voluntarily
15 and understandingly and with specific
16 intent to accomplish the purpose of the
17 conspiracy so that if a defendant with
18 understanding of the unlawful plan
19 intentionally encourages or assists in
20 its accomplishment, he thereby becomes a
21 knowing and willful participant. If it
22 appears from the evidence beyond a
23 reasonable doubt that the conspiracy was
24 knowingly and willfully formed and that
25 the accused knowingly and willfully became

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1 a member of it and then one or more of
2 the conspirators knowingly committed in
3 furtherance of an object of the conspiracy
4 one or more of the overt acts charged,
5 then the elements of the crime of conspiracy
6 are satisfied and whether or not the
7 partners accomplish their purpose is
8 immaterial.

9 By the term "overt act" is meant any
10 act committed by one of the conspirators
11 in an effort to accomplish some purpose
12 of the conspiracy. The overt act need
13 not be criminal in nature. It may be a
14 completely innocent act. It must, however,
15 be an act which tends toward the carrying
16 out of the plan and must be knowingly done
17 in furtherance of the purpose of the
18 conspiracy charged. In that regard in
19 his summation, and I don't criticize him
20 for doing it, - it is proper that he
21 point to you evidence which he feels
22 supports the Government's case, - Mr.
23 Stewart, as you will recall, referred to
24 a number of overt acts and referred to
25 places in the evidence in the case where

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1 you could find support, proof of the
2 overt acts. Even if all of the overt
3 acts were proven beyond a reasonable doubt,
4 there still would be no conspiracy charge
5 which you could vote a verdict of guilty
6 on unless you found beyond a reasonable
7 doubt that there was an unlawful plan or
8 agreement among the conspirators and that
9 the defendant knowingly and willfully
10 joined the plan. It is the unlawful
11 plan which is the essence of the conspiracy
12 count and the purpose of an overt act is
13 to make sure that if a group of people
14 discuss criminal acts and then take no
15 steps to do something toward the completion
16 of the conspiracy, that they would not be
17 charged under a conspiracy, so the overt
18 acts are necessary as a follow-up but the
19 essence of the charge is the unlawful
20 agreement.

21 To summarize, in order to establish
22 the offense of conspiracy, the evidence
23 must show beyond a reasonable doubt, one,
24 that the conspiracy described was formed
25 and existing at or about the time alleged.

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1 Two, that the accused knowingly and
2 willfully became a member of the conspiracy.

3 Three, that one of the conspirators
4 thereafter knowingly committed at least
5 one of the overt acts charged in the
6 indictment at or about the time alleged,
7 and fourth, that the overt act was
8 committed in furtherance of some object
9 or purpose of the conspiracy as charged.

10 In determining whether or not a
11 defendant was a member of a conspiracy,
12 you are not to consider what others may
13 have said or done. Membership of a
14 defendant, Mr. Dixon or any defendant in
15 a conspiracy, must be established by
16 evidence as to his own conduct, what he
17 himself said or did.

18 In this case, turning to the particu-
19 lar conspiracy charged in the indictment,
20 you must be satisfied that the object of
21 the conspiracy was to commit at least one
22 of the two crimes specifically described
23 in count one, both of which relate to
24 the solicitation of proxies from AVM
25 stockholders. I have previously read to

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1 pertinent portions of the various laws
2 and regulations and I will not repeat
3 them again.

4 The objects of the conspiracy, one is
5 set forth on the first page. That is,
6 to use the mails to solicit proxies and
7 you could read the rest, and the second
8 object is to knowingly, willfully and
9 unlawfully devising a scheme. That is
10 the scheme charged where the information
11 which was necessary to be placed on the
12 forms was denied to AVM stockholders,
13 thus depriving them of information to
14 which they were then entitled.

15 In order to find in this particular
16 case Mr. Dixon guilty of the conspiracy
17 as charged in count one, you must find
18 present all the elements which I have
19 charged you as necessary for a conspiracy
20 and you must be satisfied beyond a
21 reasonable doubt that the evidence
22 establishes each of the following, and
23 we repeated this before and we will
24 repeat it again because it is important.

25 One, that the AVM Corporation was

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1 registered with the SEC during 1970 and
2 1971 and was subject to the rules and
3 regulations of the Commission.

4 Two, that the defendant Lloyd Dixon
5 was president of the corporation during
6 1970 and 1971.

7 Three, that sometime between December
8 of 1970 and May of 1971 proxies were
9 solicited from AVM stockholders and that
10 they were furnished with a proxy statement
11 which did not disclose that the defendant
12 Mr. Dixon was indebted to the corporation
13 or that he had obtained loans from the
14 corporation or was otherwise obliged to
15 pay any interest.

16 Fourth, that in fact Lloyd Dixon, Jr.
17 was indebted to the corporation during
18 the period and that the indebtedness
19 exceeded the sum of \$10,000 at some point
20 in time between January 1 and December 31,
21 1970, and I again remind you that the
22 amount of indebtedness that we are
23 concerned with here is the sum of \$10,000
24 and that you are not to consider business
25 advances but you are to be concerned only

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with personal loans.

Fifthly, that the mails were used during these months in order to distribute the proxy statements which improperly omitted and failed to disclose the true facts about the nature of his indebtedness or that the defendant caused proxies to be received through the mails by AVM Corporation at Jamestown and that these proxies were procured as a result and for purposes of executing a scheme to defraud the stockholders of AVM by withholding information from them about the true nature of the loans to Dixon.

If you are satisfied beyond a reasonable doubt that the evidence has established each of these five elements necessary to commit a violation of the SEC Commission laws and regulations or the mail fraud statute and that Dixon knowingly and willfully conspired with others to commit one or more of these violations with respect to the proxy statements, then you may convict on count one of the indictment, and again on count

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1 one, ladies and gentlemen, you are
2 concerned with whether or not Mr. Dixon
3 and others had a plan, - it is the unlaw-
4 ful plan we are talking about and the other
5 charges we are concerned with the actual
6 doing, the completion of the acts, but as
7 far as count one is concerned, like
8 counts three, four and five, you must
9 find that Mr. Dixon had the specific
10 intent to disregard or disobey the law.

11 You must also find that under the
12 conspiracy count, that the defendant must
13 have knowingly and willfully become a
14 member of an existing conspiracy and that
15 one of the conspirators then knowingly
16 committed at least one overt act which
17 was in furtherance of some object or
18 purpose of the conspiracy.

19 Ladies and gentlemen, as I have said
20 to you before, your verdict in this case
21 must be by unanimous vote. You will have
22 a copy of the indictment and the vote
23 sheet with you as guides in your delibera-
24 tion. If at anytime you need any assistance
25 you believe from the court you should only

Exceptions and Requests to Charge.

1 attempt to get in touch with the Court
2 by a written note given to the Marshal.
3 If you come into the courtroom, do not
4 tell me how you stand for or against a
5 verdict or in any way numerically until
6 you have agreed upon a unanimous verdict
7 in this case.

8 At this time I will ask you to step
9 into the corridor so I can listen to the
10 exceptions to the charge or requests for
11 further charge by the lawyers and we will
12 have you back directly.

13
14 (Jury escorted from the courtroom
15 at 2:43 p.m.)
16

17 THE COURT: Any exceptions or requests?

18 MR. STEWART: None for the Government, your Honor.

19 THE COURT: None. Mr. Fahringer?

20 MR. FAHRINGER: Yes, your Honor, I have some, if
21 you will hear me. Is it all right if I
22 stand here, your Honor?

23 THE COURT: Certainly.

24 MR. FAHRINGER: Your Honor, I would most respectfully
25 take exception to your explanation on the

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1 \$9,000 matter that I had complained about
2 before the Court charged the jury. I
3 would most respectfully except, your
4 Honor, as to your instruction to the jury
5 that they may consider the transactions,
6 I think you said reported on the ledgers
7 as bearing on motive and intent. I would
8 respectfully request, your Honor, to your
9 instructions, - I beg your pardon, your
10 Honor, I would object to the indictment
11 including a recitation of AVM since that
12 charge has been disposed of I had assumed
13 that would be deleted from the indictment
14 and I take exception, your Honor, to your
15 mentioning to the jury --

16 THE COURT:

17 I do not think that it can be under-
18 stood unless it is included. If you
19 redact it, it is obvious that it would
20 be the corporation and I will tell them
21 again, Mr. Fahringer, if you desire, that
22 they are only to be concerned with the
23 charge placed against Mr. Dixon; that
24 whatever AVM did or did not do is of no
25 concern to them here in this case and is
 not to be in any way held against Mr. Dixon,

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1 whatever action or charge was placed
2 against the corporation.

3 MR. FAHRINGER: Your Honor, my experience has been
4 that when a defendant is disposed of, -
5 he is taken out of the indictment --

6 THE COURT: That is not my experience, Mr.
7 Fahringer. Whatever your experience may
8 be is perhaps different.

9 MR. FAHRINGER: I am sorry, your Honor. Your Honor,
10 I would respectfully request to have you
11 instruct the jury that the SEC regulations
12 are extensive and that I had only read
13 excerpts from the various rules promulgated
14 by the Commission so that there is no
15 impression left with the jury that it is
16 as simple as we stated in view of the
17 fact the argument has been made by the
18 Government here that anybody should under-
19 stand these and know about them themselves.

20 THE COURT: Mr. Fahringer, it seems to me that
21 it was clear from the testimony of
22 Mr. Entwisle and our discussion here that
23 these are complex and there are many of
24 them and I don't think any further charge
25 in that respect would be appropriate.

Exceptions and Requests to Charge.

1 MR. FAHRINGER: Your Honor, may I just, I am sorry,
2 say, and may I have my requests filed
3 and my supplemental requests file --

4 THE COURT: Certainly.

5 MR. FAHRINGER: -- and may I just generally except
6 to the Court's refusal to charge any
7 request I have made or in the language
8 that I have made. I have only several
9 others, your Honor. I would most
10 respectfully except to your charge on the
11 reliance on professional advice and
12 would particularly request that your
13 Honor instruct the jury that of course
14 reliance can be based upon professional
15 advice given to another officer of the
16 corporation. Here there is evidence of
17 Mr. Lewis who received advice from the,
18 at least the accountants and some conver-
19 sations with the attorney and, your Honor,
20 I think whatever advice he received
21 accrues to the benefit of Mr. Dixon.

22 THE COURT: I believe I have covered that
23 sufficiently.

24 MR. FAHRINGER: Your Honor, I would respectfully
25 request on the reliance matter that you

Exceptions and Requests to Charge.

1 instruct the jury that by hiring accountants
2 and hiring attorneys they are in effect
3 seeking their advice. You gave an
4 instruction that they must seek the
5 advice. I wouldn't want the jury to be
6 left with the impression that they have
7 to go to them and ask about these rules
8 and do we have to file on loans. I am
9 fearful that is the impression they have
10 been left with that in seeking advice
11 you have to ask about the specifics.

12 THE COURT:

13 No. I tried to make it clear that
14 the jury was entitled to take into
15 account all of the circumstances, the
16 kind of corporation it was, Mr. Dixon's
17 duties as president of the corporation,
18 his relationship with the lawyers and the
19 fact that I didn't mention that he must
20 ask them specifically about loans. I just
21 said that they are to make up their mind
22 based upon all the facts and circumstances
23 what information that he should have
24 given to the lawyer and what questions
25 he should have put to him.

MR. FAHRINGER:

If it please your Honor, I would

Exceptions and Requests to Charge.

1 most respectfully except to that portion
2 of your charge on reliance, professional
3 reliance, now, he must give them all the
4 information. Your Honor, I think most
5 respectfully you repeated that three or
6 four times and I would request you charge
7 the jury that he has a right to rely upon
8 the lawyer or accountant inquiring of
9 him about information that may be relevant
10 to their discharge of their duties.
11 Your Honor, I say most respectfully I
12 think the jury has been left with the
13 impression now that if a man doesn't give
14 all this information almost spontaneously,
15 concerning loans or any other information
16 to the attorney or accountant, why, they
17 have no obligation to advise him one way
18 or the other.

19 THE COURT:

I think I have covered that.

20 MR. FAHRINGER:

21 Your Honor, I respectfully except
22 to that portion of your charge where you
23 said, if I quote you correctly, that they
24 were obliged to pay interest on any loans.
25 I think that was recited from the Govern-
ment's request to charge concerning their

Exceptions and Requests to Charge.

1 reporting obligations and I think the
2 statute says that they must report whether
3 or not interest was paid and if I heard
4 you correctly, you used the phrase they
5 were obliged to pay interest on any loans.

6 THE COURT: Mr. Fahringer, I think when the jury
7 considers all of the charge and we
8 discussed that point several times, I did
9 not tell them they were obliged to pay
10 interest.

11 MR. FAHRINGER: Maybe I misunderstood, your Honor.
12 Your Honor, I would respectfully except
13 to your charge in the aiding and abetting
14 section to the jury in view of the
15 conspiracy being in the indictment.

16 THE COURT: I tried to make clear that that would
17 only apply to all counts except count one.

18 MR. FAHRINGER: And, your Honor, I would except to
19 that portion of your charge where you
20 said more is expected of a president and
21 I would particularly except to it as it
22 pertains to counts one, three, four and
23 five. I don't believe, your Honor, that
24 you limited that and certainly more is
25 expected of a president wouldn't apply

Exceptions and Requests to Charge.

1 to those counts.

2 THE COURT:

In making up their mind as to whether
or not the burden of proof of the Govern-
ment is established, I think that the
jury is entitled to consider the office
held and all of the background and I see
no unfairness to that. Certainly his
responsibilities are heavier than other
officers and other employees of the
corporation.

11 MR. FAHRINGER:

Exception, your Honor.

12 THE COURT:

I refuse to charge further. Have
the jury return, please.

15 (Jury returns at 2:52 p.m.)

17 THE COURT:

Mr. Hassett, come up. Will the
Marshals step up, please.

20 (One male and one female Deputy
21 United States Marshal sworn as custodians
22 of the jury.)

24 THE COURT:

Mrs. Rohauer and Mrs. Morton, you
25 will be excused now from consideration of

* * * * *

Sentencing Proceedings, dated 8-11-75.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

5 -v-

CRIMINAL DOCKET
NO. 1973-31

6 LLOYD DIXON, JR.,

Defendant.

7 * * * * *

8
9 Transcript of proceedings of Sentence held
10 before the HON. JOHN T. CURTIN, United States District Judge, in
11 Part I, United States Court House, Buffalo, New York, on
12 August 11, 1975.

13
14 APPEARANCES:

RICHARD J. ARCARA, United States Attorney,
appearing on behalf of The United States;
ROBERT C. STEWART, Esq., Attorney, U.S.
Department of Justice, of Counsel.

16
17 HERALD P. FAHRINGER, Esq., appearing on
18 behalf of the Defendant.
19
20
21
22
23
24

Sentencing Proceedings, dated 8-11-75.

1 THE COURT: United States v. Dixon. Are you
2 ready for sentence at this time, Mr.
3 Fahringer?

4 MR. FAHRINGER: Yes, your Honor, we are.

5 THE COURT: Are there any motions further to be
6 urged before sentence is passed in this
7 case?

8 MR. FAHRINGER: No, your Honor. I think you have
9 heard all of our motions and resolved them.

10 THE COURT: You may speak in behalf of Mr. Dixon.

11 MR. FAHRINGER: If it please your Honor, I know that
12 you have had an inordinate amount of
13 information supplied to you in connection
14 with this case and particularly as it
15 relates to Mr. Dixon's background. In the
16 time that you have had I know that you
17 have digested that material and it is not
18 my intention today to recap it but simply
19 to touch upon some of the highlights that
20 I think should be brought to the Court's
21 attention at this critical moment in the
22 life of Mr. Dixon.

23 Next Saturday he will be 55 years of
24 age, your Honor, and he has as you know
25 from some of the material that has been
supplied to you he has a find background,

Sentencing Proceedings, dated 8-11-75.

1 has led an exemplary life really until this
2 incident when he was charged with this
3 offense.

4 I might mention, your Honor, that in
5 1964 when he became President of the
6 Automatic Voting Machine Company, and as
7 you know as it was developed in the trial
8 that in the years that he was the chief
9 executive officer of that firm it rose
10 from a company of \$4,000,000 in sales to
11 \$43,000,000 in sales and acquired 13 other
12 companies. The shares of stock went from
13 2 to 48 in that period of time so that I
14 impress upon your Honor that in terms of
15 the overall picture of this man's perfor-
16 mance with the company since these charges
17 are somewhat related to his conduct in
18 that company I think the overall achieve-
19 ment of his was outstanding and the company
20 benefited and profited by his leadership
21 and guidance.

22 He has enjoyed, your Honor, enduring
23 marriage for 33 years. He has two fine
24 boys, one boy who is 32 years of age and a
25 lawyer and the other son Peter who is the

Sentencing Proceedings, dated 8-11-75.

1 assistant manager of a store in Florida.

2 I think, your Honor, if I might just
3 take a few moments for a second and be
4 specific that in the bookkeeping of a man's
5 life when he comes before the Court and
6 you are about to impose what can be the
7 most frightening sanctions that can be
8 imposed upon any man the criminal justice
9 system what he has achieved and what he
10 has accomplished I think can be stressed
11 and should be stressed in terms of your
12 judgment and I would like to deal a little
13 bit with Mr. Dixon's community service that
14 we have developed more extensively in our
15 sentencing memorandum.

16 For instance, by way of example, in
17 1972, your Honor, he was Chairman of the
18 United Fund Drive in the Jamestown area
19 and that year it achieved its goal of some
20 half a million dollars in funds raised
21 and that was the first time the goal had
22 been achieved since 1968. He has raised
23 money down there for the library. He
24 headed up the Downtown Development
25 Committee. He participated in drives for

Sentencing Proceedings, dated 8-11-75.

1 the Girl Scouts and I might say, your
2 Honor, in terms of the information that we
3 have supplied to you he has devoted himself
4 unsparingly to community service throughout
5 most of his life.

6 Over the years, your Honor, I think
7 a man's reputation can be very important
8 and his accomplishments and achievements
9 and we have supplied you with letters I
10 think from some of the most prominent
11 people in the country, people whose
12 integrity themselves I think is beyond
13 reproach who have sent letters which we
14 have accumulated in our sentencing memor-
15 andum for you; people like W. F. Rockwell,
16 Chairman of the Board of Rockwell Inter-
17 national; A. J. Paddock, Vice President of
18 United States Steel; Joseph Fuller, Assis-
19 tant Treasurer of the State of Florida;
20 lawyers, clergymen and other prominent
21 businessmen and leaders of their respective
22 communities. I think, your Honor, that this
23 collection of letters indicates that Mr.
24 Dixon needs no rehabilitation, is a man that
25 can be easily maintained in society without
any risk of any kind of any future misconduct.

Sentencing Proceedings, dated 8-11-75.

1 The keystone, your Honor, of this
2 indictment was, of course, the failure to
3 report the loans that are required by the
4 SEC, the SEC provisions, - the loans that
5 he had received and, your Honor, I have no
6 intention of squandering the Court's time
7 today by rearguing some of the issues that
8 we raised during the trial except the
9 section that provides that at the time of
10 sentence if the Court is convinced or has
11 reason to believe that the defendant, and
12 I read the section, "No person shall be
13 subject to imprisonment under this section
14 for violation of any of the rules or
15 regulations if he proves that he had no
16 knowledge of such rule or regulation", and
17 in that regard and relating specifically
18 to that section we took the liberty of
19 having Mr. Dixon submit himself to a poly-
20 graph test by one of the leading experts
21 in the country who administers that type
22 of truth detection device and we had him
23 ask specifically the question did he know
24 about this provision requiring the reporting
25 of loans when he took these loans and they

Sentencing Proceedings, dated 8-11-75.

1 were not reported and as your Honor knows
2 based upon the report that we supplied to
3 you that this expert has certified to the
4 Court that he is convinced he is telling
5 the truth when he said he had no knowledge
6 of the section, he did not know of the
7 rule at the time the loans were received
8 and not reported.

9 Finally, your Honor, let me say that
10 the consequences of this man's conviction
11 in this case has been devastating. He has
12 lost virtually everything. He was once
13 president of a nationally known corporation.
14 He has now lost that position. He has
15 had, of course, by reason of the conviction
16 his civil rights restricted or constricted.
17 His family has been stigmatized by it and
18 many of his friends alienated. He has, I
19 think, your Honor, drunk his shame to the
20 dregs and I don't think he could be made to
21 suffer any more should he suffer any more
22 and I ask the Court the question that I
23 think probably goes to the very heart of
24 the matter, what possible purpose would be
25 served in putting this man in jail. It
 seems to me that based upon the circumstances

Sentencing Proceedings, dated 8-11-75.

1 of the case and even the evidence that
2 was developed at the trial concerning the
3 accounting firm that came forward at least
4 through the evidence that we were able to
5 produce and indicated that they too had a
6 misunders~~ta~~nding of this rule and did not
7 understand the full scope of it.

8 It seems to me that under those cir-
9 cumstances it would be a grave injustice
10 to confine Mr. Dixon. I think that he
11 should be allowed to return to his family.
12 I might mention, your Honor, that the small
13 business that he had operating in Florida
14 was closed last week and he is without any
15 source of income whatsoever except the
16 savings that he has accumulated over the
17 years and he is unemployed. I don't know
18 that he should be made to suffer any more
19 and for that reason, your Honor, we would
20 ask the Court to exercise maximum leniency
21 allowed you under the law.

22 Mr. Dixon would like to say a few
23 words to you if you would hear him, your
24 Honor.

25 THE COURT:

You know, Mr. Fahringer, and I hope

Sentencing Proceedings, dated 8-11-75.

1 you have told Mr. Dixon that it is his
2 absolute right to speak in his own behalf
3 to this Court. You may repeat whatever
4 your lawyer said, Mr. Dixon, or you may
5 in addition urge upon me some things which
6 you think that you can better say than
7 your attorney, and I am here to listen.

THE DEFENDANT:

8 Your Honor, I would only like to say
9 I never knowingly did anything illegal.
10 I am not an accountant or a lawyer. I am
11 an engineer by profession. I didn't know
12 the law. The company had hired what we
13 felt were good and able attorneys and
14 accountants. My loans were always fully
15 disclosed on the books of the company.
16 The accountants knew about them. They
17 evidentially misinterpreted the rules also
18 and I did entirely rely on their advice.
19 We always reported anything that we were
20 told should be reported.

THE COURT:

Is there anything else, Mr. Fahringer?

MR. FAHRINGER:

No, your Honor.

THE COURT:

23 Of course, we had the trial in this
24 case and I did have the benefit of listening
25 to all of the testimony and it appeared to

Sentencing Proceedings, dated 8-11-75.

1 me after listening to that testimony and I
2 have already referred to some of the
3 reasons on the prior motion for a new
4 trial and so forth that I was convinced
5 by remarks at the trial and even later
6 that Mr. Dixon did have knowledge of these
7 particular regulations.

8 It is not necessary that he have
9 knowledge of the particular section number.
10 That is not required, but he did know that
11 there was a requirement that this informa-
12 tion should be reported under the regula-
13 tions prescribed by the Securities and Ex-
14 change Commission.

15 In this circumstance we had the
16 testimony of Mr. Lewis that he and Mr.
17 Dixon were aware of the SEC disclosure
18 requirements. He did say they were
19 confused about the exact details but I
20 think for a man of Mr. Dixon's background
21 that here we had substantial loans, - money
22 going out to him during the year and then
23 at the last hour they would have the system
24 of paying the money back. To follow this
25 kind of procedure would be to believe that

Sentencing Proceedings, dated 8-11-75.

1 this was the situation is just not possible
2 for the Court to swallow just from the
3 circumstances because it would make a
4 complete farce of the SEC regulations. It
5 would defeat the purpose of the regulations
6 if a man could comply at the last hour
7 and not make known the extent of these
8 loans to the stockholders, so I find that
9 there is knowledge of the regulations.

10 I have reviewed all of the materials
11 sent in. As you know from our prior
12 correspondence, Mr. Fahringer, I have
13 reviewed very carefully the letters re-
14 ceived and the past history of Mr. Dixon
15 in the community. Certainly he, - without
16 a doubt he was held in most high regard
17 by people he did business with, people he
18 was in community affairs with, everyone
19 that he had contact with.

20 When a man is president of a corpora-
21 tion such as the AVM Corporation he also
22 has the obligation I think not only to
23 carry on in the community as he should but
24 to the best of his ability carry on the
25 run ning of the corporation within the law

Sentencing Proceedings, dated 8-11-75.

1 and not in a manner so that the stock-
2 holders and where the SEC regulations
3 require other interested members of the
4 public be aware of what is going on.

5 The Government has given to me a
6 number of other incidents here. For
7 example, what they call the Venezuelan
8 bribery case; the various property dealings
9 and this kind of information. On sentencing
10 here I want you to understand what I am not
11 going to take into account. I believe
12 that in many of these instances it is a
13 matter simply of obligation which is of
14 a civil nature between Mr. Dixon and AVM
15 or Mr. Dixon and others. I also believe
16 that in some of these cases, - for
17 example, the Venezuelan case where there
18 was a trial in Florida, that there were
19 some awards made and the Government would
20 argue that this would indicate that Mr.
21 Dixon was responsible and on the other
22 hand, you say because of the small amount
23 awarded it indicates that the Court thought
24 he was not responsible and it seems to me
25 that that is just a stand-off here and I

Sentencing Proceedings, dated 8-11-75.

will not take that into consideration in any way.

I will to a slight degree take into consideration what the Government refers to as the Continental Development and only in this manner; that involved the payment of corporate funds to the Continental Development Corporation which Mr. Dixon, Mr. Newman and perhaps had organized in Europe; that we have Mr. Dixon's explanation here that the monies were paid by Mr. Newman to certain public officials in certain European countries. We have Mr. Newman's explanation that when he received the money through the corporation in Europe that he would pass them on to Mr. Dixon and that he didn't know what Mr. Dixon or Mr. Dixon's father did with the monies. In that case again there are certain civil lawsuits which are pending. I am not going to make any judgment about what story is correct. All I am going to do is take into consideration that as far as I can see from the record that there was no disclosure of the manner of the transfer of these funds to

Sentencing Proceedings, dated 8-11-75.

1 the responsible, - to the directors of the
2 corporation; that when they found out about
3 this they were completely surprised about
4 it.

5 I suppose if they were alert to their
6 own duties that they would have known what
7 was going on especially when you consider
8 that the sum of money over the years was
9 approximately in the amount of some
10 \$380,000. During this period of time there
11 were some monies which were deposited;
12 1967 \$7,500; 1968 seventeen thousand;
13 1969 \$33,000 into Mr. Dixon's account.
14 The total finally came to some \$130,000.

15 According to the Government the source
16 of these funds can not be determined. There
17 may be some Internal Revenue action which
18 is pending upon this and maybe there is
19 good reason for him not to make a statement.
20 I am not going to make any judgment one
21 way or another or take this as fact there
22 were these mysterious monies which were
23 received in these accounts without explana-
24 tion, keeping in mind all of the Continental
25 Corporation background.

Sentencing Proceedings, dated 8-11-75.

1 Merely I am going to take it into
2 consideration on the level that this plan
3 of the monies were used to pay public
4 officials in European countries, that it
5 is devised by Mr. Dixon and his father
6 without consultation with the appropriate
7 officers in the company, the directors of
8 the corporation and in this sentencing
9 procedure I am not going to consider, - I
10 want you to know that as far as the Morley
11 Road Farm background, the payment of various
12 salaries to sons of the defendant, to
13 other home improvements and the Venezuelan
14 Bribery Case, I am just not going to take
15 that into consideration and the Continental
16 Development Case only as to an example of
17 the kind of procedure carried on by Mr.
18 Dixon.

19 The sentence of the Court will be as
20 to six counts. On count one I sentence the
21 defendant to the custody of the Attorney
22 General for a period of one year and impose
23 a fine of \$10,000.

24 On count two to the custody of the
25 Attorney General for a period of one year

Sentencing Proceedings, dated 8-11-75.

1 with a fine of \$10,000.

2 Count three, to the custody of the
3 Attorney General for a period of one year
4 and a fine of \$1,000.

5 Count four, to the custody of the
6 Attorney General for a period of one year
7 with a fine of \$1,000.

8 Count five, to the custody of the
9 Attorney General for a period of one year
10 with a fine of \$1,000.

11 Count six, to the custody of the
12 Attorney General for a period of one year
13 and a fine of \$10,000.

14 Also, these sentences, count one to
15 six as to the custody direction are to be
16 served concurrently. The sentence on the
17 fines is to be consecutive for a total
18 amount in the sum of \$33,000.

19 Mr. Fahringer and Mr. Dixon, I know
20 Mr. Dixon as we have already indicated
21 is a man of excellent reputation in his
22 community but it seems to me that there
23 must be some judgment here which will
24 perhaps deter other officials of other
25 corporations who feel that they can go

Sentencing Proceedings, dated 8-11-75.

1 ahead and go things on their own without
2 complying strictly with important SEC
3 regulations and other laws governing the
4 handling of the corporation.

5 As you know, you have the right to
6 appeal. The notice of appeal must be
7 filed within a ten day period and you may
8 file it now.

9 MR. FAHRINGER: If I may, your Honor.

10 THE COURT: Fine.

11 MR. FAHRINGER: I will give a copy to Mr. Stewart.

12 THE COURT: Mr. Fahringer, do you desire to make
13 application for bail pending appeal?

14 MR. FAHRINGER: Yes, your Honor. If it please the
15 Court, I would most respectfully ask that
16 we have a stay of the sentence and bail
17 pending appeal and as you know, Mr. Dixon
18 resides in Florida but he has never failed
19 to appear here on any occasion when he was
20 obligated to. I might represent to the
21 Court that I have always been in constant
22 contact with him and there has never been
23 an occasion when he has not fulfilled his
24 responsibilities to this Court and previously
25 I believe he was released on his own

Sentencing Proceedings, dated 8-11-75.

1 recognizance and I would ask, your Honor,
2 since during the period of this litigation
3 there has never been any problem. He has
4 always appeared when obliged to.

5 THE COURT:

Mr. Stewart.

6 MR. STEWART:

Ghe Government has no objection to
that, your Honor.

8 THE COURT:

Meet with Mr. White, Mr. Fahringer,
so you can make arrangements to prepare
the appropriate order.

11 MR. FAHRINGER:

Thank you, your Honor.

12 THE COURT:

Mr. Dixon is released pending the
prosecution of this appeal.

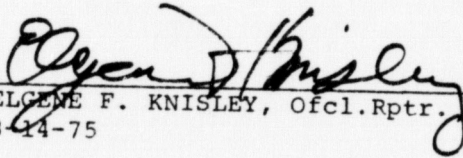
14 MR. FAHRINGER:

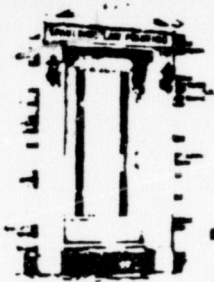
Thank you, your Honor.

(Proceedings herein concluded.)

* * * * *

19 I certify that the foregoing is a correct
and accurate transcription of my shorthand
notes taken herein.

21 
22 ELGENE F. KNISLEY, Ofcl. Rptr. USDC, WDNY
23 8-14-75
24
25



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LETTER OF TRANSMITTAL

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United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

Re: UNITED STATES OF AMERICA v. LLOYD DIXON, JR.

~~XXXXXX~~ Docket No. 75-1317

Dear Sir:

Enclosed please find copies of the above entitled for filing as follows:

~~XXXXXX~~ [10] Appendix

~~XXXXXX~~

~~XXXXXX~~ Original Record ~~XXXXXX~~

~~XXXXXX~~ Original Record ~~XXXXXX~~

Very truly yours,

Everett J. Rea

cc: Herald Price Fahringer, Esq.

Affidavit of Service

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Attorney(☒) for **Appellant,**

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of the above entitled case addressed to:

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United States Department of Justice
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Everett J. Rea
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Sworn to before me this **14th** day of **October, 1975.**

Ruth S. Moloughney
Notary Public
Commissioner of Deeds

cc: Herald Price Fahringer, Esq.